



Final Waterfront Development Plan

88 BLACK FALCON

Submitted to:

**Massachusetts Department of Environmental Protection
Waterways Regulation Program**

One Winter Street
Boston, MA 02110

Submitted by:

Massachusetts Port Authority

One Harborside Drive
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Section 1.0

Introduction and Planning Framework

1.0 INTRODUCTION AND PLANNING FRAMEWORK

This Final Waterfront Development Plan (WDP) is being submitted by the Massachusetts Port Authority (Massport) to the Massachusetts Department of Environmental Protection (MassDEP) in accordance with a Memorandum of Understanding between Massport and MassDEP dated March 15, 2001, and its amendment as approved by MassDEP (MOU), a copy of which is included in this WDP as Attachment A. This WDP specifically addresses the proposed improvements to an existing building on a parcel of Massport-owned land located in South Boston (the Property) known as 88 Black Falcon Avenue (the Planning Area), and related circulation and transportation improvements (the Project). Massport is working with DIV 88 Black Falcon LLC, an affiliate of The Davis Companies (the Tenant) that has a long-term ground lease (Ground Lease) for the entire Planning Area, including the building. Massport's goal is to ensure that the improvements to the Property as described herein (1) significantly improve area transportation infrastructure and operations; (2) effectively support and improve maritime operations at the Flynn Cruiseport Boston (Flynn Cruiseport); (3) are compatible with existing Water Dependent Industrial Uses (WDIUs)¹ along the Reserved Channel, including within the Planning Area; and (4) are consistent with activities and uses within the South Boston Designated Port Area (DPA).

The Planning Area is an important asset for Massport's maritime operations, particularly for the docking of cruise ships and associated activities. Following an extensive planning effort aimed at maintaining the competitive position of the Planning Area and the adjacent Flynn Cruiseport for Maritime Projects² and WDIUs, Massport has created a comprehensive strategy for investment and development within the Planning Area. As a byproduct of that planning effort, and consistent with the MOU, this WDP provides the necessary framework for improvements within the Planning Area by establishing Substitutions and Offsets that allow for Chapter 91 licensing by MassDEP of the Project. When complete, the Project will provide direct benefits to Maritime Projects and WDIUs within and proximate to the Planning Area by increasing the capacity and functionality of the Planning Area for those uses, and by generating additional revenue for Massport to support maritime operations in the South Boston DPA.

This WDP allows for the licensing of a specific project within the Planning Area that entails an expansion of the existing building, improvements to the adjacent pier aprons, and other traffic circulation, public realm and infrastructure improvements. This WDP and the proposed Project acknowledge the significant changes and investments made in and around the DPA and, in particular, at the adjacent Raymond L. Flynn Marine Park (RLFMP) owned by the Economic Development and Industrial Corporation of Boston (EDIC). The Project will leverage private capital and existing infrastructure to accommodate job growth sectors related to life sciences, advanced manufacturing, and research and development, in a manner that will directly benefit and support existing Maritime Projects and WDIUs and provide for their growth within the Planning Area.

¹ Capitalized terms used in this WDP are as defined in the MOU, unless otherwise specified.

² Maritime Projects, as defined at Article 1A of the MOU, are projects related to the use and operation of the Port of Boston. For the purposes of this WDP, the term "Maritime Projects" also includes the specific uses described in Section 2.4 hereof that are anticipated to operate within the Planning Area.

The proposed mix of new uses within the Planning Area will complement the existing Maritime Projects and WDIUs therein, which include a 40,000± square foot seafood processing operation on the ground floor of the existing building, and a commitment from the Tenant that at least 175,000 of the ground, second and third floors of the building will be used by Maritime Projects and WDIUs, as more particularly detailed in Section 5.2. Certain Maritime Projects and WDIUs require high-bay industrial space on the ground floor with loading docks and open areas on the pier apron; those areas within the Planning Area currently used by Maritime Projects and WDIUs will not only be maintained, they will also be improved as part of the Project. The proposed improvements to the pier apron, further described in Section 3.3, are especially important to maritime operations associated with the Flynn Cruiseport, the primary WDIU making use of the south apron. In addition, the market rate rents for the proposed Supporting DPA sub-tenants described in Section 2.0 will generate increased revenue for Massport and allow for additional capital expenditures and investments that enhance the usefulness of the Planning Area for Maritime Projects and WDIUs. The market rate rents will also financially support the below-market space to be made available to Maritime Projects and WDIUs within the Planning Area.

The proposed Supporting DPA Uses in the Planning Area will be appropriately sized and located such that they will occupy a relatively condensed upper-floor footprint, largely within the footprint of the existing structure, and will not reduce the amount of tidelands within the Planning Area that will be available for Maritime Projects and WDIUs. Through the careful selection of compatible Supporting DPA Uses, the strategic location of these additional uses primarily on the upper floors of the building, and Massport's control of the Planning Area through the Ground Lease, the improvements in the Planning Area will preserve, enhance, and maintain its utility for existing and future Maritime Projects and WDIUs.

1.1 Memorandum of Understanding – Exclusive Regulatory Framework for Certain Massport South Boston Properties

Pursuant to 310 CMR 9.03(3) of the regulations implementing M.G.L. Ch. 91, §§1-63 (Chapter 91 and 310 CMR 9.00 *et seq.*; the Regulations), Massport and MassDEP entered into a MOU dated March 15, 2001 in order to outline MassDEP's Chapter 91 jurisdiction with respect to certain activities, including those undertaken on certain portions of Massport-owned land in South Boston that include both Water-Dependent Industrial Uses or Accessory Uses and Nonwater-Dependent Uses (as each such term is defined in the Regulations). The MOU states that it constitutes the *exclusive* regulatory framework for the regulation of such structures and uses on those portions of jurisdictional Massport-owned properties in South Boston subject to the MOU. As noted above, the Property is owned by Massport and is leased to the Tenant under a long-term Ground Lease, which expires in May 2098.

The MOU established a Special Planning Area (SPA) on particular Massport-owned properties in South Boston within which future projects that include both Water-Dependent Industrial Uses and Nonwater-Dependent Uses may be undertaken pursuant to Waterfront Development Plans (WDPs) approved by MassDEP in accordance with the joint Massport/MassDEP review process set forth in the MOU. Recent Waterfront Development Plans proposed by Massport and approved by MassDEP include the Final Northern Avenue Waterfront Development Plan (2001)

as amended (2014), and the Final Waterfront Development Plan for Commonwealth Pier (2019), each of which is related to a mixed-use development project located on Massport-owned land in South Boston.

In order to facilitate the improvements in the Planning Area, Massport and MassDEP have agreed to amend the MOU to include the Property within the South Boston Special Planning Area (SPA) identified in the MOU. A copy of the MOU, as amended, is included in this Final WDP as Attachment A. Exhibit A-1 to the First Amendment depicts the boundaries of the SPA including the Planning Area; that exhibit is attached to this WDP as Figure 1.

WDPs approved by MassDEP pursuant to the MOU are required to provide, among other things, a description of the proposed land uses and dimensional characteristics of buildings, and to outline the public benefits, substitutions and offsets, as appropriate, required for the licensing of mixed-use development projects within the SPA. When a specific development project is proposed within an area covered by an approved WDP, that WDP provides the exclusive basis for Chapter 91 licensing of the project by MassDEP. In order to issue a license under the MOU, the MassDEP Waterways Program must find that (i) the proposed project is consistent with the use and dimensional standards outlined in the Regulations, as these may be modified by the applicable WDP, and (ii) the proposed project provides public benefits and offsets consistent with those required by the WDP.

The MOU provides that alternative standards may be established in an approved WDP to serve as Substitutions for applicable performance standards of the Regulations. Substitutions for numerical use limitations of Supporting DPA Uses, building height, and open space (lot coverage) are required for this specific Project proposed within the Planning Area. The proposed Substitutions for the part of the SPA encompassing the Planning Area are described in Section 4.0. The proposed Offsets and Public Benefits are described in Sections 5.0 and 6.0, respectively.

1.2 Massport's Waterfront Planning Context

Massport has engaged over many decades, and continues to engage, in a deliberative and evolutionary planning process regarding its land and water holdings on Boston Harbor. Key products of this planning process include the Northern Avenue Design Guidelines (1983); the Port of Boston Economic Development Plan (1996); the Commonwealth Flats Strategic Plan (2000), which led to the MEPA permitting of the Commonwealth Flats mixed-use development district; and the Commonwealth Flats Urban Design and Public Realm Guidelines (2005). Massport has also actively participated in the City of Boston's 2017 Raymond L. Flynn Marine Park Master Plan Update (currently underway) and the 2018 South Boston DPA Boundary Review conducted by the Massachusetts Office of Coastal Zone Management (CZM). Together, these plans and planning activities have helped to inform Massport's framework for land uses, public realm improvements, and building design for Massport properties, including those in the South Boston DPA such as the Property. Recent reports and initiatives by Massport and the City of Boston, including Massport's *Sustainability and Resiliency Design Standards and Guidelines* (2018), Massport's *Floodproofing*

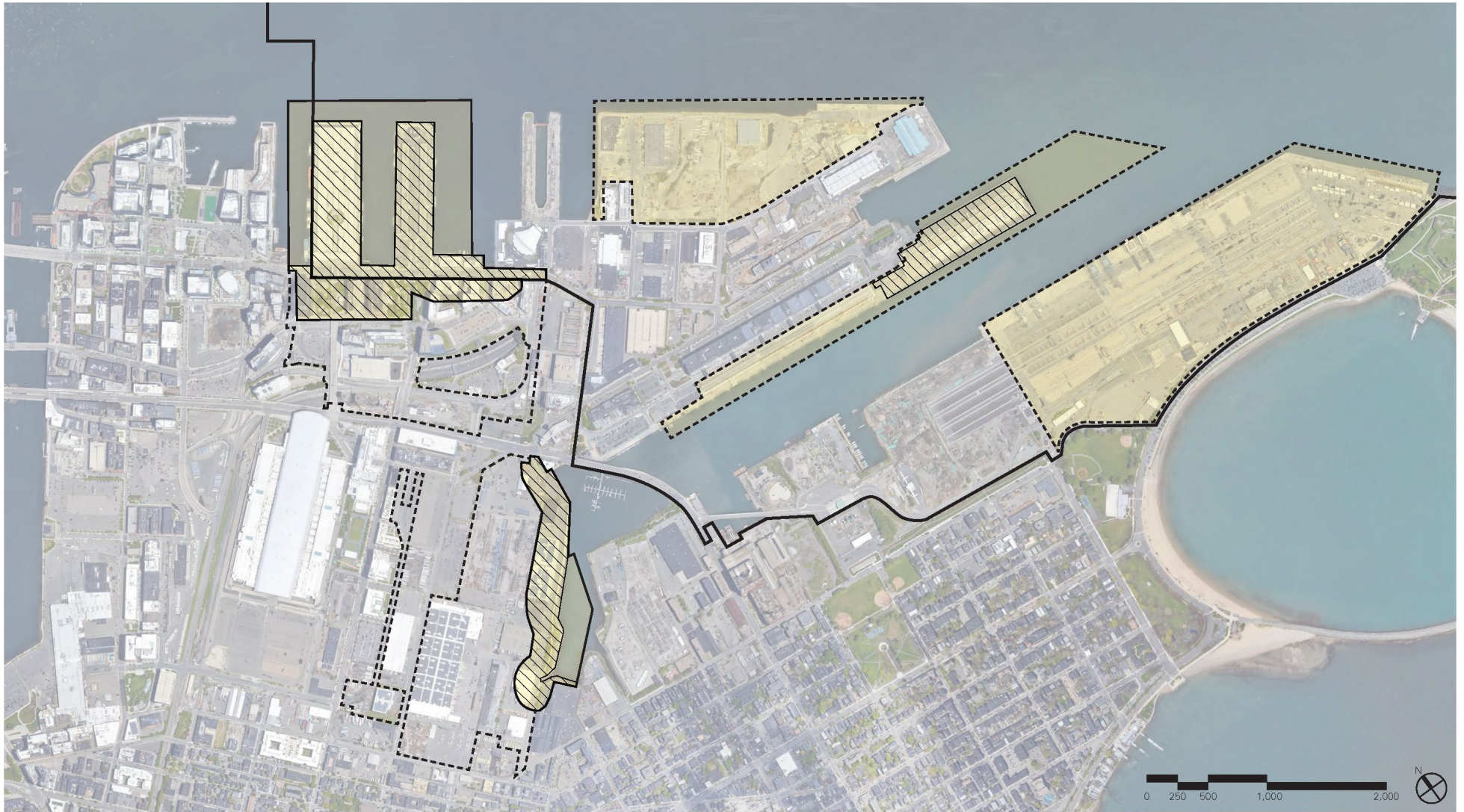


EXHIBIT B: SPECIAL PLANNING AREAS

South Boston Designated Port Area ("DPA") Map:
<https://www.mass.gov/files/documents/2019/05/23/south-boston-dpa-map.pdf>

- Massport Properties Covered by the DEP-MPA MOU
- Special Planning Area
- Designated Port Area boundary
- Approximate Massport Property Line

Design Guide (2015), and the City of Boston's *Climate Ready Boston* initiative, each of which focuses on the growing impacts of climate change, also help guide Massport's long-range planning and help shape the priorities of WDPs, including this one.

The above-referenced plans and planning activities also serve as important guides for Massport's internal decision-making, including prioritizing and phasing commercial mixed-use development projects and core capital improvements that help to create dependable revenue streams to support Massport's maritime activities and investments. Through its strategic planning process,

Massport has developed a set of planning principles for development on its waterfront properties. These principles, which are listed below, seek to create an appropriate balance of land uses that support maritime industrial activities while also enhancing waterfront public access where feasible. As part of Massport's comprehensive planning approach for its South Boston waterfront properties, the following principles establish an important framework for this WDP:

- ◆ Maintain priority of port-related activities;
- ◆ Planning decisions that integrate a focused commitment to equity, diversity, and inclusion in all forms;
- ◆ Provide non-maritime revenue from residential and mixed-use developments in the Massport-owned Commonwealth Flats area of South Boston to support Massport's maritime and port-related activities (e.g., cruise operations);
- ◆ Improve transportation mobility and connect to the surrounding neighborhood;
- ◆ Create a balanced mixed-use district;
- ◆ Catalyze job creation;
- ◆ Be a good neighbor;
- ◆ Advocate strong, cohesive urban design and public access when and where appropriate;
- ◆ Undertake environmentally responsible development; and
- ◆ Facilitate interagency coordination, including an integrated, comprehensive approach to climate change through mitigation and adaptation.

1.2.1 Massport's Sustainability and Resiliency Design Standards and Guidelines

Massport has committed to making its facilities more sustainable and improving resiliency at each of its properties. Massport's *Sustainability and Resiliency Design Guidelines* (SRDGs) ensure a minimum standard of sustainability for all Massport projects by codifying sustainability practices, establishing sustainability targets, and tracking progress toward those goals. The SRDGs apply to all Massport facilities, including development projects undertaken by third parties on Massport-

leased properties, and sets sustainability goals for energy consumption and greenhouse gas reductions; water conservation; community, employee, and passenger wellbeing; materials waste management and recycling; resiliency; noise abatement; air quality; ground access and connectivity; water quality/stormwater management; and natural resources. The SRDGs require that projects eligible for Leadership in Energy and Environmental Design (LEED) certification meet the prerequisites and credits for a Silver Certification or higher. In addition, the SRDGs require that all projects meet the standards set forth in the Massport *Floodproofing Design Guide*, employ strategies to reduce stress on Massport’s power supply, and integrate design features that protect structures from air-borne storm debris, extreme winds, and water.

1.2.2 Massport Flood Proofing Design Guidelines

Massport’s facilities are increasingly susceptible to flooding hazards caused by extreme storms and rising sea levels as a result of climate change. Massport has developed design guidelines for use in its capital planning and real estate development processes to make its infrastructure and operations more resilient to flooding threats. Developments on Massport–owned properties, including properties under a Massport ground lease such as the Property, are required to be designed in accordance with these guidelines.

Key objectives include:

- ◆ Protect the safety of passengers, occupants, workers, and first responders;
- ◆ Minimize flood damage to critical Massport facilities whose destruction or loss of service will have a debilitating effect on the security, economy, safety, health and/or welfare of the public;
- ◆ Enhance business resiliency, and expeditiously recover and restart critical services with minimum delay and damage to public safety and health, economy and security;
- ◆ Provide for operational continuity to the greatest extent possible;
- ◆ Minimize losses of electrical power, communications, security and other critical services facility-wide and to individual critical assets;
- ◆ Prevent structural and property damage to the maximum extent possible, and
- ◆ Maintain capacity to support regional emergency response and disaster recovery at Logan Airport and Conley Container Terminal during, and immediately after, an extreme storm event.

1.2.3 Climate Ready Boston

South Boston is one of the City's most exposed neighborhoods with respect to climate change impacts, as it experiences both chronic high-tide flooding and episodic storm-related flooding in addition to the regional impacts of climate change, including greater intensity rainfall events and more intense heat waves. South Boston's exposure is expected to increase significantly over the course of the next hundred years as climate change continues to affect our environment. To protect against this exposure, *Climate Ready Boston*, an ongoing initiative by the City of Boston, has identified the following key issues to be addressed in new development projects.

Sea Level Rise and Future Storms

Future projects should include resiliency measures to minimize the impact of potential flooding, including locating all critical mechanical and electrical equipment on an upper floor or otherwise elevated above predicted future flood levels. Site designs should incorporate flood and salt tolerant plant species in open spaces. Higher ceiling heights on the ground floor (such as those existing at the Property) can provide flexibility for adaptation for future sea level rise.

Rainfall Events

Projects should take into account predictions for greater amounts and greater rates of rainfall during peak events and design systems to accommodate higher flows and safely direct and/or store rainfall to avoid contributing to major flooding events.

Extreme Heat Events

Future development projects should anticipate higher temperature events, including more extended and higher temperature heat waves. Building systems should be designed to provide appropriate comfort levels during these periods, and site designs and high-performance building envelopes should minimize the energy required to cool buildings.

1.2.4 Imagine Boston 2030

In 2017, the City of Boston released the first citywide plan in more than fifty years, "*Imagine Boston 2030*." *Imagine Boston 2030* identifies Boston's goals of "encouraging continued economic growth, becoming more affordable and equitable, and preparing for climate change." *Imagine Boston 2030* is a planning tool that Massport uses as it plans for the future of its developable properties in Boston.

The goals of *Imagine Boston 2030* include creating a waterfront for future generations that would:

- ◆ Support a welcoming and active waterfront.
- ◆ Link neighborhoods to the water.
- ◆ Foster economic opportunity.

- ◆ Accommodate future climate change.
- ◆ Improve environmental quality.
- ◆ Ensure sustainable funding structures.
- ◆ Facilitate collaborative planning.

1.2.5 *Raymond L. Flynn Marine Park Master Plan Update*

The on-going RLFMP Master Plan Update process involves re-evaluating the role of the RLFMP in the Port of Boston and the City's industrial ecosystem, and provides an economic and market-based analysis of the potential for existing and new economy uses at the RLFMP. The RLFMP continues to sustain robust industrial uses such as ship repair, seafood processing, and design wholesale business clusters, along with small-scale manufacturing and life science research and technology companies. Within that context, the Master Plan Update process involves evaluating the RLFMP's unique attributes of deep-water berthing areas, an active dry dock (the largest on the Atlantic coast north of Virginia), and quick access to dedicated truck routes and Logan Airport, as well as industrial-scale building assets. The limitations and challenges of the RLFMP are also being assessed, including parking restrictions, a transit system with limited capacity, and aging waterfront industrial infrastructure.

1.3 Amendment to Memorandum of Understanding/Description of Addition to Special Planning Area

As noted in Section 1.1, Massport and MassDEP have amended the MOU with respect to certain Massport South Boston properties, to include the Property (for purposes of this WDP, called the Planning Area) as part of the Special Planning Area established in the MOU.

The Planning Area for this WDP consists of approximately 458,250 square feet square feet [approximately 10.52 acres] of land at 88 Black Falcon Avenue, comprised of approximately 9.35 acres of previously filled tidelands and approximately 1.17 acres of pile-supported structure over flowed tidelands.

The watershed seaward of the pier apron, which is also owned by Massport but not part of the Planning Area, accommodates five ship berths, two along the north apron and three along the south apron. The three berths on the south apron are most commonly utilized by cruise ships. The two berths along the north apron are regularly used by Coastal Cement Corporation, Inc. (Coastal Cement), which ground leases EDIC land directly to the north of the Planning Area, for the docking of cement barges and ships making deliveries to the Coastal Cement facility. Coastal Cement has a long-term license with Massport to undertake associated activities on the Property, which are complementary in nature to the existing and anticipated uses at the Property.

The Planning Area and its existing uses and layout are shown on [Figure 2](#). The Planning Area is entirely within the area covered by the MOU and is also entirely within the boundaries of the South Boston DPA.

1.4 Review and Approval Process for Final Waterfront Development Plans

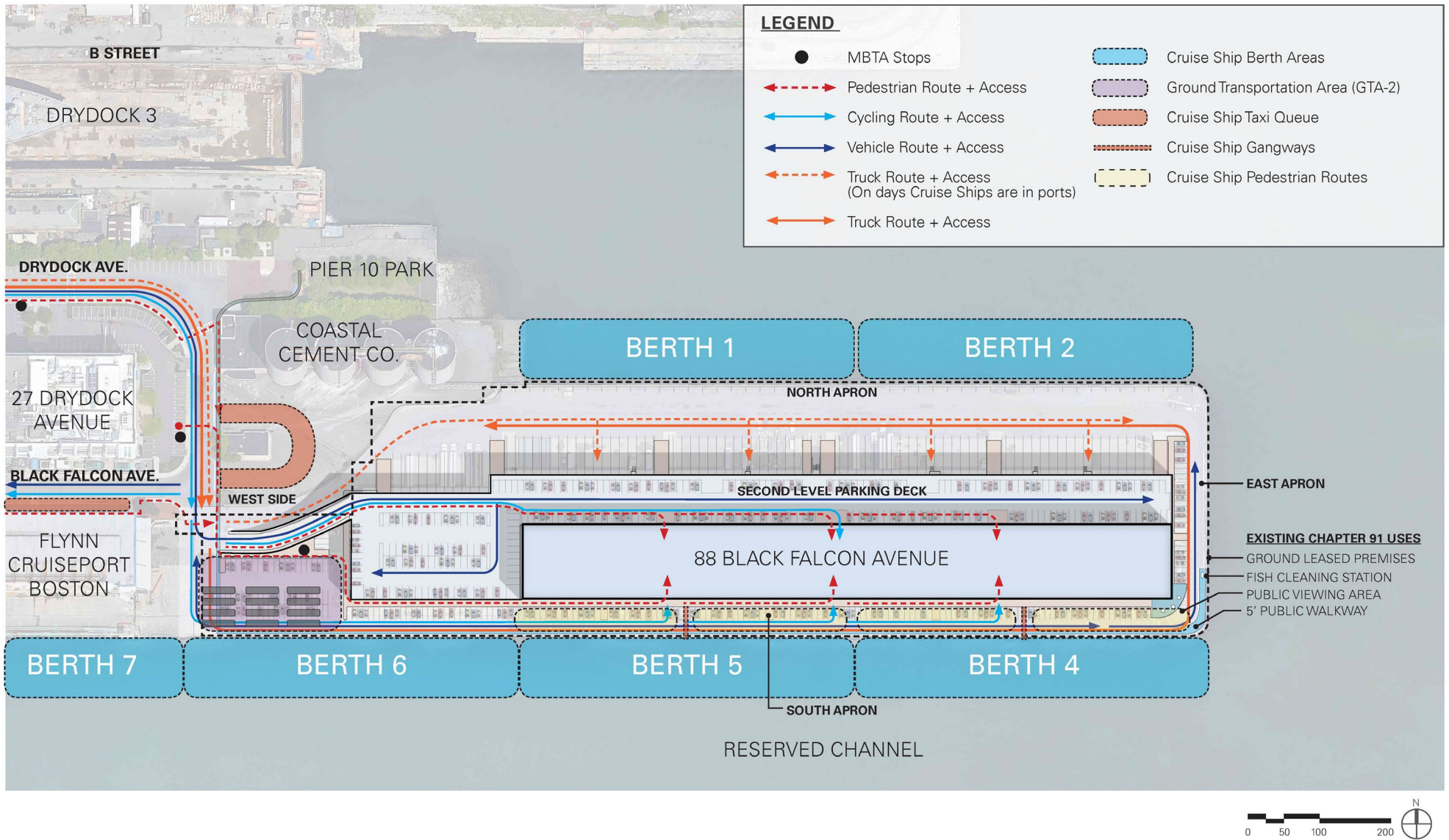
As generally set forth in Section 3.3(C) of the MOU, Massport's submission of a Final Waterfront Development Plan to MassDEP initiates the MassDEP review and approval process. The MOU provides that upon receipt of this Final WDP, MassDEP is obligated to publish notice of its receipt in the next available edition of the *Environmental Monitor*, and not later than forty-five (45) days after the publication of such notice, Section 3.3(C) of the MOU calls for MassDEP to approve this WDP, conditionally approve this WDP, or disapprove this WDP. Section 3.3(C) of the MOU sets forth the determinations that MassDEP is to make in connection with any such approval.

1.5 Purpose/Rationale for 88 Black Falcon Waterfront Development Plan

This WDP provides the framework for a specific mixed-use project and associated improvements within and adjacent to the Planning Area that will provide direct benefits to Maritime Projects and WDIUs within and proximate to the Planning Area, as well as to future Maritime Projects. When complete, the Project will increase the capacity and functionality of the Planning Area to host and support Maritime Projects and WDIUs, and will provide additional revenue to Massport to support port operations and associated infrastructure in the South Boston DPA.

This WDP provides for significant and important improvements to maritime and other infrastructure that will benefit WDIUs and support the growth of maritime operations in the Planning Area. The infrastructure improvements primarily benefit the Flynn Cruiseport operations in the Planning Area by expanding ground transportation facilities at the Property and by improving the south apron for the boarding and disembarking of cruise ship passengers and the loading of equipment and supplies. Other improvements facilitated by this WDP will benefit the South Boston DPA more generally, such as the complete redesign and reconstruction of the Drydock Avenue/Black Falcon Avenue intersection, and the improvement of the MBTA bus stop at that location. Within this framework, this WDP integrates appropriate Nonwater-Dependent Uses that will be compatible with the industrial nature of the Planning Area, while also providing for continued public access and amenities as allowed by port operations and pertinent safety and security requirements.

In general, the existing requirements for the use of tidelands within DPAs are intended to preserve the capacity of those tidelands to host current and future WDIUs by, among other things, limiting the type, duration, and location of other uses that may occupy vacant space in a DPA to those that do not interfere with WDIUs. Subject to such limits and as further conditioned by the Ground Lease and this WDP, commercial and industrial sub-tenants, such as life sciences, advanced manufacturing, and research and development, and uses accessory thereto (all Supporting DPA Uses) will co-exist successfully with and provide critical support to more traditional Maritime



88 Black Falcon Waterfront Development Plan Boston, Massachusetts



Figure 2
WDP Planning Area Existing Conditions

Projects and WDIUs in the Planning Area, helping to mitigate commercial development pressure that makes it increasingly difficult for these types of operations to afford rent in Boston's rapidly-evolving urban waterfront. In order to achieve those goals, this WDP leverages private investment to optimize the value of the Planning Area while improving its utility for Maritime Projects and WDIUs.

1.6 Existing Conditions

The Planning Area comprises an approximately 10.52-acre parcel of land located within the South Boston DPA and is bounded by the Reserved Channel to the south, Boston Harbor to the east, EDIC land and the Boston Harbor to the north, and Drydock Avenue, a roadway owned by EDIC, to the west. The Planning Area is owned in fee by Massport and leased to the Tenant pursuant to the Ground Lease. The EDIC land located directly to the north of the Planning Area is currently ground leased by EDIC to Coastal Cement. The Planning Area also includes certain appurtenant easement rights held by Massport and appurtenant to Tenant's rights under the Ground Lease, over adjacent EDIC land to facilitate pedestrian and vehicular access to Drydock Avenue.

The Planning Area contains a three-story building which comprises approximately 353,950 sf of Gross Floor Area (GFA), as well as 243 surface parking spaces located on the south and east aprons, and 312 open, second level deck parking spaces, accommodating a total of 555 vehicles collectively. The open deck parking area is accessed by a two-way vehicular ramp on the western edge of the building. On the northern side of the building there are approximately 83 truck loading bays used by ground floor sub-tenants of the building. The north apron is in continuous use, chiefly by the building's WDIU sub-tenants, primarily for truck access to the loading bays. The north apron is also used for short-term materials lay-down and staging by building sub-tenants, and by Coastal Cement for its concrete unloading activities related to its use of the ship berths adjacent to the north apron. On certain occasions the north apron accommodates the berthing of larger vessels, including cruise and military vessels. The south apron supports three vessel berths along the Reserved Channel, utilized primarily in connection with the Flynn Cruiseport. When cruise ships are berthed at the Property, the entire south apron is used exclusively for embarking and disembarking passengers and for the loading and servicing of berthed cruise ships. Ground Transportation Area 2 (GTA 2) is also located on the south apron and provides a designated area for cruise passengers to access ground transportation services. When the south apron is not used in connection with the Flynn Cruiseport, vehicular parking along the building façade is available to sub-tenants, trucks accessing the north apron may do so via the south apron, and pedestrian access along a designated accessway is provided to the public.³

The building currently houses a roster of sub-tenants that includes Maritime Projects, WDIUs, and Supporting DPA Uses, such as office and other accessory uses thereto. In compliance with the existing Chapter 91 License for the Property (*i.e.*, MassDEP License No. 13408), and based on

³. As subleases turn over, priority to south apron parking spaces will be given to WDIUs and Maritime Projects.

MassDEP’s Ground Floor Equivalency methodology of calculating Supporting DPA Uses, approximately 23.9% is subleased to Supporting DPA Uses (a small portion of the building is vacant⁴). There is additional space that is common space and is not assignable, including hallways, lobbies, stairwells, etc. There is one small Facility of Public Accommodation (a sandwich shop) located on the ground floor of the building.

As required by MassDEP License No. 13408, the Tenant maintains exterior public facilities that include a five-foot-wide public access walkway along the pier’s south apron, and a viewing area at the easterly end of the pier with interpretive signage, binoculars, lighting, trash receptacles, and benches. A fish cleaning station is also located at the easterly end of the pier, for which running water and trash receptacles are provided, along with signage notifying the public of the availability of the public access walkway, public viewing area and the fish cleaning station. A public restroom is located on the ground floor of the building and is available to the public during customary business hours of the sub-tenants at the building.

1.7 Reinventing 88 Black Falcon Avenue

The Flynn Cruiseport, which makes use of the Planning Area, has experienced record-setting growth in recent years, with 402,347 passenger-visits on 138 ship calls/turns to Boston during the 2019 cruise season. Although the COVID-19 pandemic essentially shut down the global cruise industry in 2020 and 2021 and was significantly impairing it as of early 2022, it is anticipated that after the COVID-19 pandemic is under control (including the lifting of all related public health emergency orders), cruise operations will continue to expand at the Port of Boston in the coming years. Some cruise operations out of the Flynn Cruiseport have already commenced. Massport is also looking to increase cruise line and passenger interest in Boston by reviewing options to expand Flynn Cruiseport use into weekdays and the “shoulder” season, i.e., the period between peak and off-peak cruise season.

Massport has encouraged the proposed upgrades to the Property (described below) as a means to improve the facilities along the pier’s south apron for berthing of cruise ships and accommodating the needs of cruise passengers. These berthing facilities have historically been used on 20 to 25 occasions per year when three cruise ships are in port (as the linear feet of berthage at Flynn Cruiseport is typically sufficient for only two ships), and this use of the Property and its south apron facilities is projected to increase in earnest once cruise operations begin to be regularly scheduled once again. However, the pier south apron within the Planning Area is currently constrained by the layout of adjacent roadways and the physical limitations of the Planning Area itself - constraints which will be addressed by the proposed Project.

⁴ Consistent with MassDEP guidance, the fraction of the gross interior floor space of the building devoted to Supporting DPA Uses is multiplied by the underlying footprint of the building, yielding the Ground Floor Equivalent Footprint. Vacant space does not alter that calculation.

The planned improvements to the pier will achieve the following: (1) increase the capacity of ground transportation services at the Property on cruise days (by means of a substantial increase in the size of GTA 2, located to the west of the building, which increase is made possible by the relocation of the existing parking ramp and the reconfiguration of the Drydock Avenue/Black Falcon Avenue intersection); (2) remove ground-level obstructions on the south apron to facilitate passenger movements and vessel servicing; and (3) provide new public restrooms available to cruise passengers and a Massport storage room for port operations equipment on the west side of the building under the new parking ramp. These improvements will create a vastly superior terminal layout for cruise port operations and allow Massport greater flexibility to accommodate vessels throughout the port, including vessels that might otherwise be unable to make use of the pier. These improvements will also ensure that the Planning Area can support the next generation of cruise vessels that will call at the Flynn Cruiseport in the future.

The primary access way to the Planning Area will also be improved through a total redesign and reconstruction of the Drydock Avenue/Black Falcon Avenue intersection as part of the Project. The existing multiple driveways to the Property, which are poorly delineated and do not provide a safe environment for pedestrians or bicyclists, will be consolidated into a single, standard four-way intersection that aligns the new entrance drive with Black Falcon Avenue as it currently exists to the west. These improvements will also include ADA-compliant sidewalks, curb ramps, and pedestrian crosswalks where none currently exist. The intersection improvements will also provide better access and circulation for the Maritime Projects and WDIU sub-tenants of the building and improve truck access to the Coastal Cement facility.

Existing MBTA Silver Line bus service that formerly entered the Planning Area and GTA 2 has already been rerouted by the MBTA to an existing bus stop located at the northwest corner of the intersection of Drydock Avenue and Black Falcon Avenue. In concert with the reconstruction of the Drydock Avenue/Black Falcon Avenue intersection, the Silver Line bus stop will be improved as part of the Project to enhance passenger comfort and bus safety, consistent with the MBTA's *Better Bus* program, subject to applicable MBTA approvals.

1.8 Tenant Assumption of Additional Maintenance Obligations

As part of the Project, the Tenant has agreed to undertake certain additional maintenance obligations at certain portions of the Property that are not currently part of the Tenant's legal obligations under the Ground Lease. These will include responsibility for all pavement surfaces and all areas below-grade (*i.e.*, all foundations and pier structures), exclusive of the concrete deck immediately below the pavement surfaces located on the aprons. These new responsibilities will also extend to an additional EDIC easement area that will be the subject of an amendment to the existing easement that has been agreed to and authorized by the Boards of EDIC and Massport; that amendment will allow for the implementation of the intersection improvements at Black Falcon and Drydock Avenues and will improve the on-going operations of Coastal Cement. As part of the Project, the Tenant will also construct a new, state-of-the-art and better-located dispatch facility for Coastal Cement, and the design of the new intersection improvements will result in improved truck egress/access circulation for the Coastal Cement facility as well as all other users

of the intersection, many of which are Maritime Projects or WDIUs. By assuming the additional maintenance responsibilities referenced above, all of which will be memorialized in a Third Amendment to the Ground Lease to be effective after the Chapter 91 license for the Project has been issued, the Tenant will enable Massport to free up resources it can utilize for other maritime operations and activities.

1.9 Operational/Safety Requirements of Maritime Projects

Access to and use of portions of the Planning Area by the public is, and will remain, subject to public safety and port security considerations for ongoing maritime operations. For example, when cruise ships are berthed at the Property, the south apron and GTA 2 are secured and public access is controlled by Massport Police in accordance with U.S. Coast Guard regulations.⁵ The servicing and berthing of other vessels may also require safety and port security measures that preclude public access when deemed appropriate by Massport Police or other public safety officials, including the U.S. Transportation Security Administration (TSA). Other portions of the Planning Area, primarily the north apron, are actively used for truck access, freight handling, and temporary warehousing by Maritime Projects and WDIU sub-tenants of the building, and the docking and unloading of cement barges and ships related to the Coastal Cement facility. These existing Maritime Projects and WDIUs are incompatible with safe public access to the north apron. Hence, the existing public access facilities are, and will continue to be, accessed from the south apron.

The existing public access facilities and amenities described in Section 1.6 will be upgraded and expanded, including new public restrooms convenient for cruise passengers on the west side of the building near GTA 2 and an additional outdoor public viewing and seating area on the second level of the building. The new public viewing area will be accessed by the new elevator core to be constructed at the northwest corner of the building, and will include benches and other seating accommodations, as well as a large area in which members of the public may enjoy panoramic views of Boston Harbor and the Boston skyline.

Improvements to the Planning Area will address existing operational constraints on maritime operations, particularly along the south apron and at GTA 2, both of which are critical to maritime operations associated with the Flynn Cruiseport. Currently, curbing installed along the southern façade of the building limits the mobility of gangways and loading platforms used to disembark passengers and to service cruise ships. The elimination of this curbing, which is proposed as part of the Project, will make it easier to deploy these gangways and loading platform systems, particularly when larger vessels are berthed in the Planning Area (over time, the size of cruise ships has steadily increased). Relatedly, GTA 2, which serves as the primary ground transportation area for cruise ship passengers, is severely limited by its current size. As a result, the staging of

⁵ The use of the south apron by building sub-tenants and members of the general public is prohibited at times when port security measures are implemented by Massport Police or other public safety officials.

taxis and RideApp vehicles (e.g., Uber and Lyft) often occurs outside the Planning Area at the adjacent Coastal Cement facility, a scenario that can only occur on weekends when that facility is largely idle. Even when space is available for such vehicles at Coastal Cement, that access is inconvenient for cruise ship passengers, who must make their way through the vehicle-congested GTA 2 to access this temporary taxi area. This access is particularly inconvenient for mobility-impaired passengers. The substantial expansion of GTA 2 by approximately 55%, which will be made possible by the Project (i.e., the demolition of the existing parking ramp and the construction of a new ramp adjacent to the building), will reduce the need for off-site queuing and related cruise passenger inconvenience.

1.10 Required Elements of Waterfront Development Plans

The MOU describes a number of specific elements that must be included in a WDP to create "criteria, performance standards, and guidelines for development applicable to projects" to be subsequently licensed under Chapter 91 in the WDP Area. These elements, with references to where each is addressed in this WDP, include the following:

Planning Analysis:

A description of the planning analysis that serves as the basis for the WDP and draws upon technical data and other information used by Massport in its ongoing comprehensive waterfront development planning, is provided in Section 1.2.

Proposed Uses:

A summary description of proposed uses in the Planning Area is provided in Section 2.0.

Public Benefits for Nonwater-Dependent Uses:

Since this WDP provides for Nonwater-Dependent Uses in the Planning Area, this WDP identifies appropriate Public Benefits (as defined in the MOU), a methodology for allocating the Public Benefits required for each Nonwater-Dependent Use, and describes a methodology for tracking the implementation of Public Benefits and Offsets.

Public benefits for Nonwater-Dependent Uses in the Planning Area are described in Section 6.0.

Design Requirements:

This WDP identifies performance criteria for a specific project within the Planning Area that includes Nonwater-Dependent Uses, including dimensional guidelines, design guidelines, and requirements regarding public and pedestrian access, and criteria that are Substitutions for the performance requirements set forth in the Regulations.

Design requirements for Nonwater-Dependent Uses in the Planning Area and associated proposed Substitutions are described in Section 4.0.

Offsets:

Where appropriate, this WDP identifies Offsets to mitigate potential impacts resulting from the application of Substitutions that vary from the performance standards otherwise applicable under the Regulations.

Offsets for the Substitutions proposed for use within the Planning Area are described in Section 5.0.

Implementation Program:

An Implementation Program commensurate with the scope of this WDP, which may include provisions in leases and licenses to ensure ongoing compliance with obligations set forth in the WDP, is described in Section 7.0.

Consistency with Coastal Zone Management Policies:

Section 9.0 of this WDP describes the plan's consistency with all applicable policies of the Massachusetts Coastal Zone Management Program updated in 2011, including the Coastal Hazards Policies, Energy Policies, Growth Management Policies, Habitat Policies, Ocean Resources Policies, Port and Harbor Policies, Protected Areas Policies, Public Access Policies, and Water Quality Policies.

Accommodation for Redevelopment of Existing Structures:

Section 3.2.H. of the MOU is inapplicable because this WDP does not contemplate redevelopment of the 88 Black Falcon building in a manner that is consistent with that provision of the MOU.

Section 2.0

Proposed Uses/Proposed Project

2.0 PROPOSED USES/PROPOSED PROJECT

2.1 Building Design Concept and Development [Building Addition and Improvements]

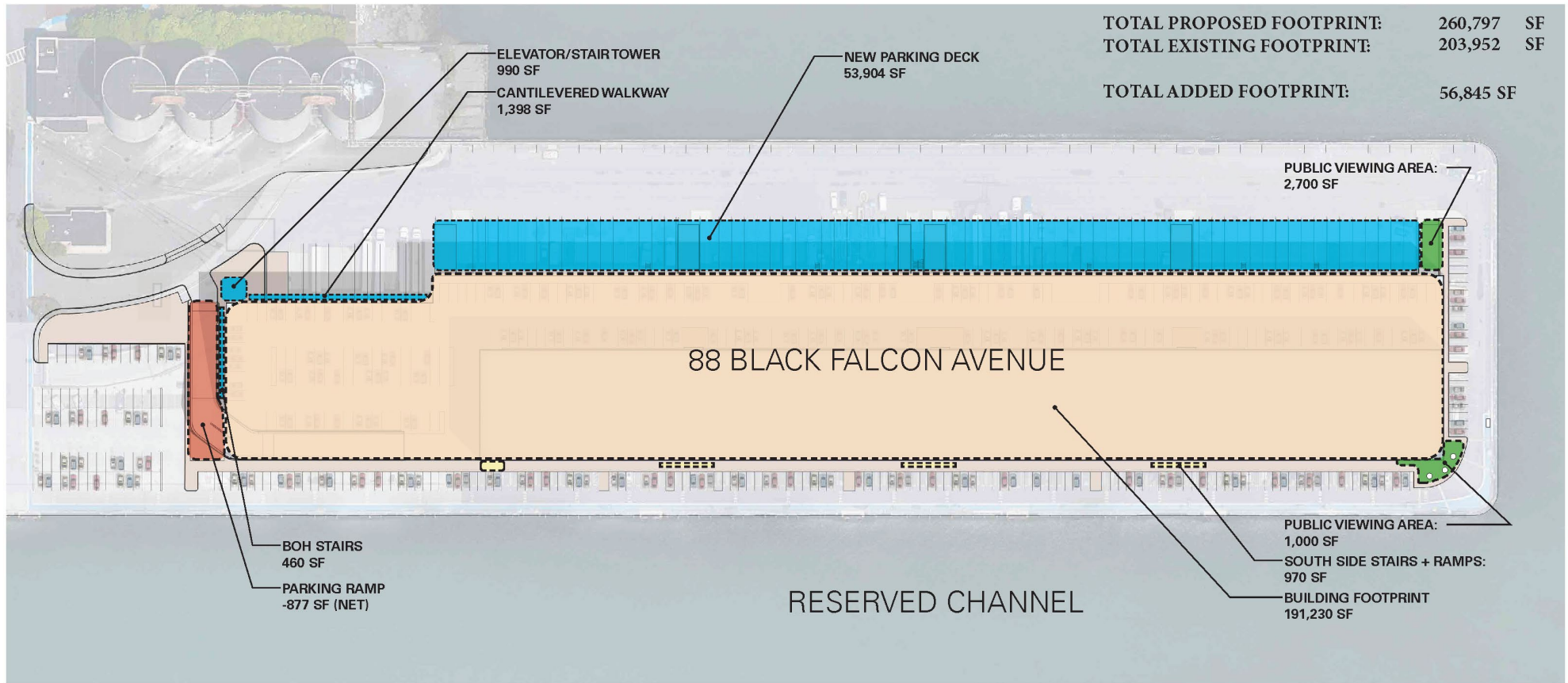
This WDP provides for the construction of a four-story, approximately 327,600 sf (GFA) addition to the existing three-story building within the Planning Area. The proposed addition will primarily be a vertical expansion of the building that will provide contemporary flex-industrial/commercial space with the capacity to accommodate many uses over the building's lifespan, all of which are intended to be compatible with Maritime Projects and WDIUs currently located, or which may be located in the future, within the Planning Area.

At the ground level, an additional approximately 1,960 sf of GFA will be added to the existing building footprint in order to construct a publicly accessible vertical access tower and new elevators and stairs on the southern building façade. A second level pedestrian walkway will also be constructed at the northwest corner of the building. The Project includes an expansion of the existing second level parking deck over the north apron that will enable the currently open-air loading areas to be partially covered. That expansion will also allow for the continued use of the existing truck bays and lay-down space by Maritime Projects and WDIUs and will not interfere with the ongoing or reasonably anticipated maritime operations at Berths 1 and 2 along the north apron. A new publicly accessible viewing area will also be constructed on the eastern end of the second level parking deck. The proposed building footprint is shown on [Figure 3](#) and further described in Section 4.2.2.

Additional improvements proposed within the Planning Area include the relocation of the existing vehicular ramp used to access the second-level parking deck to a location adjacent to the building, which will make available additional ground-level space for the substantial expansion of, and much-needed circulation and safety improvements to, GTA 2. The existing parking ramp contains no pedestrian accommodations, resulting in unsafe vehicular/pedestrian conflicts; the new vertical access tower referenced in the preceding paragraph will provide safe, ADA-compliant pedestrian access to the parking deck and new public viewing area. The new and relocated parking ramp will also include new public restrooms and a GTA 2 storage area underneath. On the south apron, the curbing along the building façade will be removed to facilitate more flexible servicing of cruise vessels berthed at the south apron and passenger boarding/disembarking operations. These components of the Project are further described in Section 2.2.

2.2 Vehicle and Pedestrian Access and Circulation Improvements, including Intersection Improvements

The Project will include improvements to pedestrian and vehicular access and circulation. These improvements will include the reconstruction of the intersection of Drydock Avenue, Black Falcon Avenue, and the 88 Black Falcon vehicular access drive, realigning its geometry to create a safer and more functional four-way intersection for pedestrians, bicyclists, and vehicles, including



88 Black Falcon Waterfront Development Plan Boston, Massachusetts



Figure 3
Proposed Building Footprint

heavy trucks accessing the loading docks on the north apron and the Coastal Cement facility, as well as MBTA buses operating on Drydock Avenue and buses for cruise ship passengers accessing GTA 2.

The new proposed public realm improvements are primarily located on the westerly side of the Planning Area where, other than disembarking cruise ship passengers, pedestrians access the Property. The proposed design of the roadway intersection includes the reconfiguration of the intersection as a conventional four-way intersection, new ADA-compliant curb ramps, sidewalks, and crosswalks, as well as a pedestrian sidewalk along the site driveway leading to the building entrance. These improvements, shown on [Figure 4](#), will make walking safer and more attractive while providing a clearly defined pedestrian path between the nearby MBTA Silver Line bus stop and the building (as well as docking cruise ships). Pedestrian, bicycle, and vehicle safety will also be improved by providing a clearly defined site access drive with associated signage for vehicles accessing the parking deck and trucking operations accessing the Coastal Cement facility and loading bays on the north apron. The building will contain bicycle parking facilities for employees working at the building as well as outdoor bicycle racks for public use.

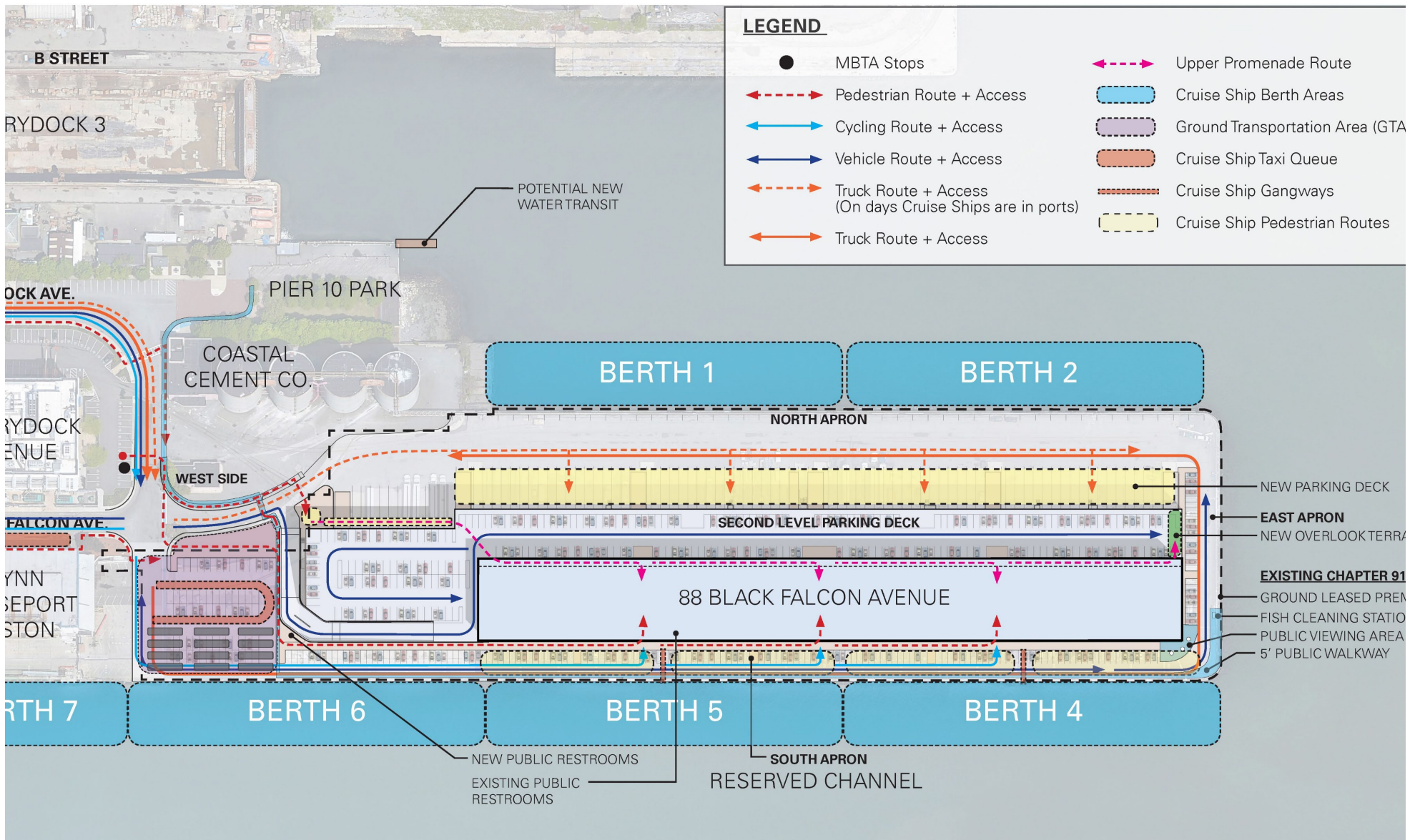
The roadway intersection improvements will be subject to Massport's securing from the EDIC, as owner of the RLFMP, the property interests necessary to construct the intersection improvements, as well as approvals of the applicable governmental authorities. This grant of easement interests from EDIC to Massport has been approved by the board of directors of both EDIC and Massport, and will be effectuated prior to the construction of the Project.

To enhance and encourage transit ridership and help mitigate potential ground access impacts of the Project, the intersection improvements include construction of a new bus shelter at the MBTA Silver Line bus stop at Drydock and Black Falcon Avenues, as well as the creation of a new bus lane adjacent to the stop to allow MBTA pickup and drop-off activity to occur without hindering traffic at the Flynn Cruiseport and other area destinations. These improvements are consistent with recommendations in the MBTA's Better Bus Project⁶ and will be coordinated with the MBTA, EDIC, and the tenant of the adjacent 27 Drydock Avenue property. Massport and the Tenant are also working with tenants of EDIC (*i.e.*, Coastal Cement and the tenant at 27 Drydock Avenue) to ensure that their operations will not be materially impaired during construction of the Project and its associated off-site improvements.

2.3 Nonwater-Dependent Uses

This WDP proposes that a range of uses be permitted within the approximately 327,600 sf (GFA) of the newly constructed upper floors and within a portion of the approximately 375,000 sf (GFA) of the ground, second, and third floors of the existing structure. In addition to Maritime Projects

⁶ <https://www.mbta.com/projects/better-bus-project>



88 Black Falcon Waterfront Development Plan Boston, Massachusetts



Figure 4
Vehicle and Pedestrian Access and Circulation Improvements

and WDIUs, uses within the building are anticipated to include, generally, commercial and industrial tenants such as life sciences, advanced manufacturing, and research and development, and uses accessory thereto. By virtue of the market rate rents for the proposed sub-tenants that will subsidize Maritime Projects and WDIUs, such sub-tenants are considered Supporting DPA Uses.

The strategic location of Supporting DPA Uses primarily on the upper floors of the building, coupled with Massport's control of the Planning Area through the Ground Lease, will preserve and maintain the utility of the Planning Area for existing and future Maritime Projects and WDIUs by providing for further investment in infrastructure that supports Maritime Projects and WDIUs. Maritime-related improvements within the Planning Area are described in Section 3.0.

In keeping with 310 CMR 9.32(1)b(5) and 310 CMR 9.36(5)(b), the Supporting DPA Uses proposed for the Planning Area have been appropriately sized and located, such that they will occupy a relatively condensed upper-floor footprint, largely within the footprint of the existing structure, and will not reduce the amount of tidelands within the Planning Area that will be available for Maritime Projects and WDIUs - because these Supporting DPA Uses will not require use of the pier aprons (beyond access, egress, or use of common area available to all sub-tenants).

In the immediate term, the Project facilitated by this WDP will upgrade and expand facilities that support Maritime Projects and WDIUs in the Planning Area and the South Boston DPA, particularly the Flynn Cruiseport's water-dependent industrial operations unique to this part of the Port. To that end, the building expansion is primarily a vertical addition that intentionally preserves space for Maritime Projects and WDIUs, including the Flynn Cruiseport and cargo vessel operations along the pier aprons, while subsidizing interior space, primarily on the ground floor, for what currently consists of, and is anticipated to remain, a mix of traditional Maritime Projects and WDIUs, including businesses and facilities transporting goods in waterborne commerce, facilities associated with commercial passenger vessel operations, and seafood processing operations. Furthermore, the investments made in the building will provide new, modern tenant amenities that are common for the anticipated Supporting DPA Uses but which the building currently lacks or are otherwise not typically available to Maritime Projects and WDIUs at similar industrial facilities. The amenities will be made available to all sub-tenants of the building and will include bicycle storage areas, café/food service facilities for building employees, a fitness center, and a business center/meeting room area.

In the long term, the Project ensures the viability of the Planning Area for existing and future Maritime Projects and WDIUs, and as a maritime operations asset for Massport. The Tenant will continue to prioritize marketing of the ground floor of the building to Maritime Projects and WDIUs pursuant to an affirmative Marketing Plan that is a part of the proposed Third Amendment to the Ground Lease.

As noted above, the proposed mix of Supporting DPA Uses, by virtue of the market rate rents for Supporting DPA Use sub-tenants, will generate increased revenue for Massport and allow for additional capital expenditures and investments that enhance the value of the Planning Area for

Maritime Projects and WDIUs. Such investments in the Planning Area will prolong its useful life, allow it to adapt to future demands in the Port of Boston (such as servicing ever-larger cruise ships), and will further sustain existing industrial and maritime jobs within the Planning Area. In this regard, the proposed building arrangement and expansion of Supporting DPA Uses will provide critical support for Maritime Projects and WDIUs within the Planning Area.

Although the ground floor of the building will be reserved primarily for Maritime Projects and WDIUs, as further described in Section 4.1, this WDP proposes that Nonwater-dependent Facilities of Private Tenancy that provide services and amenities to one or more sub-tenants of the building notwithstanding those sub-tenants' classification with regard to water-dependency, will be permitted on a limited basis, along with other uses authorized in DPAs. Ground floor uses may also include a limited amount of Facilities of Public Accommodation, such as a café/restaurant use, but will not include hotel or conference facilities. The ground floor is also anticipated to include one or more bicycle storage rooms for employees based at the building. In general, making services and amenities available to all sub-tenants of the building will improve the marketability of the Planning Area. Therefore, upper floors of the building (primarily the second) will include conference/meeting room facilities, a lunch room/cafeteria, and a fitness facility.

2.4 Water Dependent Industrial Uses and Maritime Projects

In addition to the types of WDIUs currently active and expected to remain active in the Planning Area (*e.g.*, seafood processors), Maritime Projects expected to be located in the Planning Area will include sub-tenants engaged in the intermodal transportation of goods shipped by sea, such as multi-modal trucking/logistics operators, freight forwarders, and importers/exporters expected to work with Maritime Projects and WDIUs at the Project, Conley Container Terminal, the RLFMP, and elsewhere within the South Boston DPA. With the recent \$850 million investment overseen by Massport to modernize and expand Conley Container Terminal and dredge Boston Harbor to accommodate larger container ships, these services and operations are critically important to the effective use and efficient operation of the Port of Boston more than ever before.

These types of businesses are part of the ecosystem supporting the Conley Container Terminal by serving as intermediary custodians of the shipping containers that arrive via container ship to the Conley Container Terminal and the final destination/customer for the contents of the container. In that capacity, they perform value-add services such as assisting with customs clearance of shipments, labelling, packaging and repackaging, stowing, and insuring merchandise, and ensuring it is delivered to its final destination/customer via the appropriate type of carrier in the most cost-effective manner for the shipper and the customer. They may also divide shipments and prioritize their transit based on seasonality, perishability, and the urgency of the cargo. All of these functions are an extension of the critical role of Conley Container Terminal in supporting water-borne commerce.

The Planning Area, located in proximity to both Conley Container Terminal and Logan Airport, is strategically positioned to support these types of high-value operations. Given the pier's lack of functionality regarding the transfer between ship and shore of modern bulk or containerized materials, Massport has determined the aforementioned Maritime Projects are high-value services for the Port of Boston and are especially appropriate for the Planning Area as they are supportive of the Conley Container Terminal. Relatedly, U.S. Customs, Immigration and Homeland Security serve important and essential functions in the Port of Boston ecosystem, and their operations in the Planning Area are also considered a Maritime Project. Both Customs and Immigration and Homeland Security are intrinsically involved in the shipment of cargo through Conley Container Terminal, the delivery of cement to Coastal Cement to the extent this occurs on foreign flag vessels, and the processing of cruise passengers and cruise ship crew members, and thus their presence in the Project area is of critical importance to these Water Dependent Uses.

Investments in the Planning Area are intended to also accommodate sub-tenants from emerging and evolving marine technology and related sectors that will be able to exploit synergies with maritime and aviation businesses and potential employees in the DPA and the South Boston Seaport as well as at Logan Airport; that is, new kinds of Maritime Projects related to the use and operation of the Port of Boston. In support of the Commonwealth's efforts to cultivate jobs in the offshore wind sector, Massport intends for the Planning Area to support emerging Maritime Projects that align with the development of offshore wind projects. These Maritime Projects may include offshore wind energy technologies, marine propulsion enterprises (including marine hybrid propulsion businesses), maritime research, oceanic applied technology, and automated aquatic robotics businesses, which require proximity to the water for their research and development operations. The offshore wind industry is currently in expansion mode. It will rely on a variety of new, evolving technologies, many of which pertain to robotics, drone technologies, remote sensing, and other technology-heavy specialties listed above, to develop solutions to enhance the efficiency and safety of their work. As the wind power business matures, there may be several locations within the Boston Harbor waterfront that are used to support this industry and serve as operational bases for a variety of business functions, including the planned multi-model cargo facility at the nearby Massport Marine Terminal. Many of the evolving technology companies that are expected to emerge and grow in supporting this industry will prefer to co-locate to take advantage of economies of agglomeration and be part of an emerging eco-system of the wind power industry, which will emerge as a legitimate water-dependent use as a whole to the extent its facilities are located in the ocean.

These sectors share common markets, technologies, and worker skill needs with more traditional WDIUs, in some cases require direct water access on a regular basis, and may be further linked by buyer-supplier relationships that already exist in the Port of Boston. Thus, their presence in the Planning Area will enhance prospects for investment, industrial development, and innovation within the DPA. In many instances, these emerging sectors do not require direct ship-to-shore transfer of materials – a typical requirement of WDIUs under the provisions of 310 CMR 9.12(2)(b). Nonetheless, it has become increasingly clear that these emerging sectors will play a critical role in ensuring the competitiveness and sustainability of the Port of Boston, and Massport

has determined that their presence in the Planning Area should be encouraged. These emerging sectors can benefit greatly by co-locating within the DPA, and improvements to the Planning Area will provide a potential location for their sustainable and inclusive growth within the Port of Boston.

Section 3.0

Maritime-Related Improvements

3.0 MARITIME-RELATED IMPROVEMENTS

3.1 Ground Transportation Area No. 2

As noted in Section 2.1, the proposed relocation of the existing vehicular access ramp next to the building will unlock ground-level space, thus allowing for an approximately 55% increase in the size of GTA 2. GTA 2 will be reconstructed in a manner similar to that of Ground Transportation Area 1, located outside the Planning Area, which serves the other cruise ship berths at the Flynn Cruiseport, allowing for consistency of operational procedures among the ground transportation areas.

The planned expansion of GTA 2 will also provide greater flexibility for port operations by providing more space for passenger buses at GTA 2, and more efficient taxi and RideApp (*e.g.*, Uber and Lyft) vehicle queuing within GTA 2. Currently, GTA 2 has only limited space available for passenger buses and vehicle queuing, which often necessitates the staging of buses and vehicles off-site. For example, taxis are often staged further away on Black Falcon Avenue or at the adjacent Coastal Cement facility, a scenario that can only occur on weekends when the Coastal Cement facility is largely idle. This is inconvenient for cruise ship passengers and difficult for mobility-impaired persons, who must make their way along the length of the Property and through the vehicle-congested GTA 2 to access this temporary taxi area. The expansion of GTA 2 reduces off-site queuing and passenger inconvenience.

To improve maritime operations on cruise days, the Tenant will construct and make available to Massport a storage space beneath the reconfigured vehicular access ramp for GTA 2 equipment. Public restrooms to serve cruise ship passengers at GTA 2 and members of the public will also be constructed in adjacent ground-level space below the new vehicular access ramp, a convenient location for cruise ship passengers.

3.2 Public Accommodations and Facilities

As described above, the Planning Area is located within the DPA and large portions of the Planning Area are actively used by Maritime Projects and WDIUs, including cruise ship and cement vessel berthing, heavy truck movements, and materials handling. Consequently, improvements to exterior and open space areas as envisioned in this WDP are primarily intended to improve conditions for Maritime Projects and WDIUs and to ensure that the improved public access amenities provided in the Planning Area do not impair the operations of the Maritime Projects and WDIUs. The exterior improvements proposed as part of the Project, therefore, focus on infrastructure that will continue to serve the existing public access amenities and meet the operational needs of cruise ship and other port operations (*e.g.*, activities on the north apron for building sub-tenants and access to the Coastal Cement facility). Nonetheless, public access within the Planning Area remains a priority, and improvements to traffic circulation, safer pedestrian access (including new, universally-accessible pedestrian sidewalks where none currently exist), and an improved Silver Line bus stop will be constructed as part of the Project to facilitate better, safer access to the waterfront for the general public when and where port-related uses allow.

The existing public access facilities include a five-foot wide public access walkway along the south apron, a harbor viewing area, and a fish cleaning station at the easterly end of the pier, all of which are planned to continue as currently authorized by MassDEP License No. 13408, and which will be rehabilitated and enhanced to improve their functionality.

Portions of the existing public access walkway leading to the south apron will be improved by the installation of curbing, sidewalks (either flush or flexible in some areas), and a clearly delineated crosswalk at the site access drive. The public access walkway will be rehabilitated along the entire length of the south apron and otherwise maintained in its current location to provide access to the public viewing area and fish cleaning station located at the easterly end of the pier. Similarly, the fish cleaning station will be replaced and modestly expanded to provide additional amenities. An existing public restroom at the east end of the building will be supplemented by the new public restrooms at the west end of the building, adjacent to GTA 2. New wayfinding signage in accordance with DEP Waterways Program guidelines will be installed to facilitate use of these public amenities.

The new public restrooms to be constructed in proximity to GTA 2 will provide better availability and convenience to the public and to cruise ship passengers. The existing public restroom at the east end of the pier will remain available to the public during customary business hours of subtenants at the Property.

Additionally, a new public viewing area will be constructed at the easterly end of the second level parking deck. This new public viewing area will provide seating, lighting, trash receptacles, and other appropriate amenities at a safe location that allows a unique perspective of maritime activities within the Planning Area, Boston Harbor, and nearby at the Boston Ship Repair drydock. This new public viewing area will be accessible 24 hours per day, seven days per week, via the vertical access tower to be constructed on the northwest side of the building.

Massport and the Tenant will also work collaboratively with the Seaport Transportation Management Association, the City of Boston, and other stakeholders in evaluating the feasibility of creating a new water transportation facility and water ferry service within the South Boston DPA. To that end, the Tenant shall contribute \$500,000 towards toward planning, design and engineering efforts that will improve water transportation in the area surrounding the Planning Area, as further described in Section 5.2. This contribution is intended to satisfy any applicable requirements for support of public water transportation for the Project within the Planning Area authorized pursuant to this WDP.

3.3 Functional Improvements to Pier Apron

In addition to the improvements allowing for the expansion of GTA 2, along the south apron, the ground-level improvements will include the removal or relocation of existing curbing, ramps, and stairs that interfere with the mobility of gangways and other equipment used for the boarding of cruise ship passengers and the loading of equipment and supplies. Removal of these obstructions will facilitate cruise operations and also allow for the berthing of larger vessels. Use of the pier

aprons by WDIUs and Maritime Projects is, and will remain, prioritized over other uses and many of the proposed improvements to the south pier apron are intended to support WDIUs and Maritime Projects. Any improvements to the pier aprons or uses thereon will not preclude WDIUs and Maritime Projects nor will they affect the utility or adaptability of the pier aprons for use by WDIUs and Maritime Projects.

Chapter 91 Regulatory Analysis and Proposed Substitutions

4.0 CHAPTER 91 REGULATORY ANALYSIS AND PROPOSED SUBSTITUTIONS

As required by the MOU, this section of the WDP reviews applicable provisions of the Waterways Regulations and identifies proposed modifications (Substitutions) to such requirements. Section 5.0 describes associated Offsets, if required, to address potential adverse impacts on water-related public interests or other potential adverse environmental impacts associated with the Substitutions described below.

Structures and uses within the Planning Area will be required to comply with all of the applicable Chapter 91 regulatory performance standards, as specified in Section 1(C) of the MOU,⁷ except as specifically modified by this WDP.

This WDP proposes Substitutions for the amount of Supporting DPA Uses in a DPA, Facilities of Private Tenancy, building height and open space (lot coverage) that are necessary to make possible a feasible mixed-use project. Massport has worked to ensure that the proposed alternative building dimensions and uses within the Planning Area to be permitted by this WDP will achieve the following:

- ◆ Improve port operations within the Planning Area, and preserve and enhance existing Maritime Projects and WDIUs (including vehicular and pedestrian circulation and safety for port operations);
- ◆ Will not give rise to conflicts with port operations or excessive consumption of port space, whether directly or indirectly;
- ◆ Will result in no net loss of Maritime Projects and WDIUs in the Planning Area; and
- ◆ Are consistent with maximum height restrictions pertaining to Boston Logan International Airport airspace.

Table 1 provides a summary of the proposed Substitutions and Offsets contemplated herein.

⁷ Pursuant to Section 5.5 of the MOU, structures and uses on Massport properties subject to a Waterfront Development Plan are required to conform to specifically identified Chapter 91 Applicable Regulatory Performance Standards and to the Substitutions identified in the WDP. Section 1(C) of the MOU defines the Applicable Regulatory Performance Standards as 310 CMR 9.31-9.33, 9.35(1)-(3) and (6), 9.37-9.40, and 9.51-9.53.

Table 1 Summary of Substitute Provisions and Offsetting Measures

Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measure
<p>Categorical Restrictions on Fill and Structures</p>	<p>9.32(1)(b) – Tidelands within Designated Port Areas</p>	<ul style="list-style-type: none"> ◆ With the exception of at least 175,000 sf of Maritime Projects and WDIU sub-tenants on the ground, second, and third floor of the building, the remainder of the building may be occupied by Supporting DPA Use sub-tenants. ◆ Ground floor Nonwater-dependent Facilities of Private Tenancy will be permitted on a limited basis along with other uses authorized in DPAs. Nonwater-dependent Facilities of Private Tenancy and Facilities of Public Accommodation, will not occupy more than 15,000 sf of the ground floor of the building. 	<ul style="list-style-type: none"> ◆ At least 175,000 sf of the building’s ground floor, second floor and third floor will be used for Maritime Projects, WDIUs, and Temporary Uses (as described in Section 5.1 of this WDP). ◆ The Tenant will provide discounted rents of at least 10% to future Maritime Projects and WDIUs occupying up to 175,000 sf of space on the ground, second and third floors of the building. ◆ The Project will increase by approximately 55% the size of GTA 2, thus facilitating ground transportation, vehicular circulation and safer cruise ship operations in general. ◆ The Tenant will remove existing curbing on the south apron and resurface the apron to facilitate cruise and maritime operations. ◆ The Tenant will construct a covered and secured space of approximately 500 square feet in size beneath the new parking ramp for Massport’s storage of GTA 2 support supplies

Table 1 Summary of Substitute Provisions and Offsetting Measures (Continued)

Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measure
<p>Categorical Restrictions on Fill and Structures (Continued)</p>			<p>(e.g., bollards, tents, signage, etc.). Design, engineering, and construction costs for the storage space will be paid for by the Tenant.</p> <ul style="list-style-type: none"> ◆ Contemporaneously with the commencement of construction of the Project, the Tenant will assume certain pier maintenance/repair tasks within the Planning Area that are currently legal obligations of Massport.
<p>Conservation of Capacity for Water-dependent Use – Facilities of Private Tenancy</p>	<p>310 CMR 9.51(3)(b) - Facilities of Public Accommodation, but not nonwater-dependent Facilities of Private Tenancy, shall be located on any pile-supported structures on flowed tidelands and at the ground level of any filled tidelands within 100 feet of a project shoreline.</p>	<ul style="list-style-type: none"> ◆ Nonwater-dependent Facilities of Private Tenancy on the ground floor of the building shall be permitted within 100’ of the project shoreline. Any such Facilities of Private Tenancy on the ground floor of the structure are limited to uses that provide services or amenities to sub-tenants of the building and, coupled with Facilities of Public Accommodation, shall not exceed 15,000 sf of ground-level space within the building. 	<ul style="list-style-type: none"> ◆ Two new, universally accessible public restrooms will be provided beneath the reconfigured parking ramp. These restrooms will supplement the existing public restroom at the east end of the building and will have broader availability, including while cruise ships are berthed. Design, engineering, and construction costs for the new public restrooms will be paid for by the Tenant. ◆ The Tenant will construct new pedestrian pathways along the westerly side of the building to provide safe access to the pedestrian walkway along the

Table 1 Summary of Substitute Provisions and Offsetting Measures (Continued)

Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measure
<p>Conservation of Capacity for Water-dependent Use – Facilities of Private Tenancy (Continued)</p>			<p>south apron leading to the public viewing area and fishing cleaning station at the east end of the pier. The pedestrian walkway along the south apron will be rehabilitated in its current location.</p> <ul style="list-style-type: none"> ◆ New wayfinding signage will be installed along public pedestrian pathways, the existing public viewing area at the east end of the pier will be improved, and the fish cleaning station will be replaced and modestly expanded
<p>Conservation of Capacity for Water-dependent Use – Open Space</p>	<p>310 CMR 9.51(3)(d) - At least one square foot of the project site at ground level, exclusive of areas lying seaward of a project shoreline, shall be reserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use within the Planning Area.</p>	<ul style="list-style-type: none"> ◆ Allowable lot coverage of up to 57% to allow for the construction of new additions to the building, which consist primarily of the second level parking deck and will not materially impact ground level uses. 	<ul style="list-style-type: none"> ◆ A new, approximately 2,700 sf public viewing area will be constructed at the easterly end of the second-level parking deck.

Table 1 Summary of Substitute Provisions and Offsetting Measures (Continued)

Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measure
<p>Conservation of Capacity for Water-dependent Use – Building Height</p>	<p>310 CMR 9.51(3)(e) - New buildings over the water and within 100 feet of the high water mark shall not exceed 55 feet in height. Beyond 100 feet of the project shoreline, building height may increase one foot for every two feet landward of the project shoreline.</p>	<p>◆ Building height, measured from grade, along the south and north aprons is allowed up to 118 feet to the top of the highest occupiable floor and no more than 132 feet overall, inclusive of mechanical penthouses and enclosures related thereto.</p>	<p>◆ None; additional building height is anticipated to have minor impacts to pedestrian-level wind or shadow.</p>

4.1 Use of Tidelands within Designated Port Areas

DPA's are land and water areas that have regulatory requirements to preserve certain physical and operational features uniquely suited to water-borne commerce (including commercial shipping and fishing) and to manufacturing, processing, and production activities reliant upon marine transportation or the withdrawal or discharge of large volumes of water. The continued availability of land and facilities for such activities has important state, regional, and national significance.

Protection and support of critical Maritime Projects and WDIUs is a central objective of this WDP. The Planning Area is within the South Boston DPA and along the Reserved Channel, which provides deep-water access and berthing for vessels accessing facilities at the Flynn Cruiseport and at the Conley Container Terminal. Immediately adjacent to the Planning Area, the Flynn Cruiseport and Coastal Cement facility are existing maritime operations for which portions of the Planning Area provide integral operational support. Coastal Cement, for example, docks cement barges and ships at two deep-water berths (i.e., Berths 1 and 2) at the north apron on a weekly basis and uses equipment installed on the north apron to unload those barges. Within the Planning Area, existing Maritime Projects and WDIUs include businesses transporting goods in waterborne commerce, facilities associated with commercial passenger vessel operations, and seafood processing. All of these uses will be preserved and maintained throughout the construction of the Project and, as a function of the enhancements to the Planning Area and the flexibility this WDP provides, long into the future.

The implementation of this WDP will improve use and maintenance of the existing building and the exterior pier aprons for Maritime Projects and WDIUs. In addition to these actual operations, consistent with the DPA designation of the Planning Area, ground lease payments for the use of the Planning Area by the Tenant provide critical support for maritime infrastructure investments undertaken by Massport. The planned improvements to the Planning Area, therefore, focus on feasible upgrades within the Planning Area that directly or indirectly support existing and reasonably foreseeable Maritime Projects and WDIUs, improve their profitability, and increase the competitive advantages of the Planning Area.

Consistent with Massport's goals for the Planning Area, this WDP proposes the following Substitutions that provide flexibility concerning uses that would otherwise be precluded in the DPA under the provisions of 310 CMR 9.32(1)(b) of the Regulations:

- ◆ With the exception of at least 175,000 sf of Maritime Projects and WDIU sub-tenants on the ground, second, and third floors of the building, the remainder of the building may be occupied by Supporting DPA Use sub-tenants.
- ◆ Ground-floor Nonwater-dependent Facilities of Private Tenancy will be permitted on a limited basis along with other uses authorized in DPAs. Nonwater-dependent Facilities of Private Tenancy and Facilities of Public Accommodation will not occupy more than 15,000 sf of the ground floor of the building. Permissible Nonwater-dependent Facilities of

Private Tenancy on the ground and second floors of the structure will be limited to non-residential uses that provide services or amenities to sub-tenants of the building, whether or not those sub-tenants are classified as Maritime Projects or WDIUs (*e.g.*, meeting areas, food service facilities, fitness facilities and/or bicycle storage facilities for employees and guests of sub-tenants).

Offsets for these Substitutions are described in Section 5.1.

4.2 Conservation of Capacity for Water-dependent Uses

310 CMR 9.51 requires that Nonwater-dependent Uses which include fill or structures on any tidelands shall not unreasonably diminish the capacity of such lands to accommodate water-dependent use. In applying this standard, MassDEP takes into account the utility or adaptability of the site for present or future water-dependent purposes, especially in the vicinity of a Water-dependent Use Zone. The following section describes Substitutions for certain dimension and use requirements otherwise applicable under the standards of 310 CMR 9.51.

4.2.1 Facilities of Private Tenancy

310 CMR 9.51(3)(c) limits the types of uses on pile-supported structures over flowed tidelands and at the ground level of any filled tidelands within 100 feet of a project shoreline to Facilities of Public Accommodation and WDIU and Supporting DPA Uses. Nonwater-dependent Facilities of Private Tenancy are not permitted on the ground level within 100 feet of a project shoreline. In consideration of the proposed mix of uses within the Planning Area, the dimensions of the existing pier, and the configuration of the existing building on the pier, this WDP proposes the following Substitute provision allowing Nonwater-dependent Facilities of Private Tenancy within 100 feet of the project shoreline.

- ◆ On the ground floor of the building, Nonwater-dependent Facilities of Private Tenancy are limited to uses that provide services or amenities to sub-tenants of the building (regardless of the sub-tenant's classification as a Maritime Project, WDIU, or Supporting DPA Use) and, coupled with Facilities of Public Accommodation, shall not exceed 15,000 sf of ground-level space within the building. Although it is anticipated that only a fraction of this space will be located within 100 feet of the project shoreline, this substitution allows up to 15,000 sf to provide flexibility for the reallocation of space within the building over time.

Offsets for this Substitution are described in Section 5.2.

4.2.2 Open Space/Lot Coverage

310 CMR 9.51(3)(d) requires at least one square foot of ground level open space for every square foot of tideland area within the footprint of new buildings containing Nonwater-dependent Uses. The net effect of the standard is that at least 50% of the tidelands area, exclusive of areas lying seaward of a project shoreline, must be preserved as open space. Unlike open space standards

in other sections of the Regulation, this dimensional standard considers any open land to be "open space" and does not distinguish between parks, green spaces, streets, sidewalks, parking areas, or other types of open space.

Under the open space standard, approximately 229,125 sf of the Planning Area must remain as open space. To allow for improvements to the Planning Area, this WDP proposes increasing the allowable lot coverage to 57% to allow for the construction of new additions to the building that include: (i) new elevators, ramps, and stairs at the southeast corner of the building, central southern part of the building, and southwest corner of the building (approximately 970 sf in the aggregate), (ii) a new elevator lobby at the northwest corner of the building near the building entrance (approximately 990 sf), (iii) a cantilevered walkway running alongside the existing parking deck and stairs (approximately 1,398 sf and 460 sf, respectively), and (iv) a new parking deck on the second level of the building (approximately 53,904 sf). The new vehicle access ramp to the second level parking deck will be approximately 877 sf smaller than the existing ramp. Together, these improvements comprise approximately 56,845 sf of new building footprint.

The proposed increase in lot coverage is largely a function of expanding the elevated parking deck. Rather than increasing ground-level parking, an expansion of the parking deck was selected because it preserves ground-level space for Maritime Projects and WDIUs on the north apron and maintains access for heavy trucking to the loading bays. The other discrete additions to the building footprint will improve pedestrian safety for sub-tenants and others accessing the building and will also permit upper floor sub-tenants to access the building and members of the public to access the new public viewing area when the south apron is controlled by Massport Police.

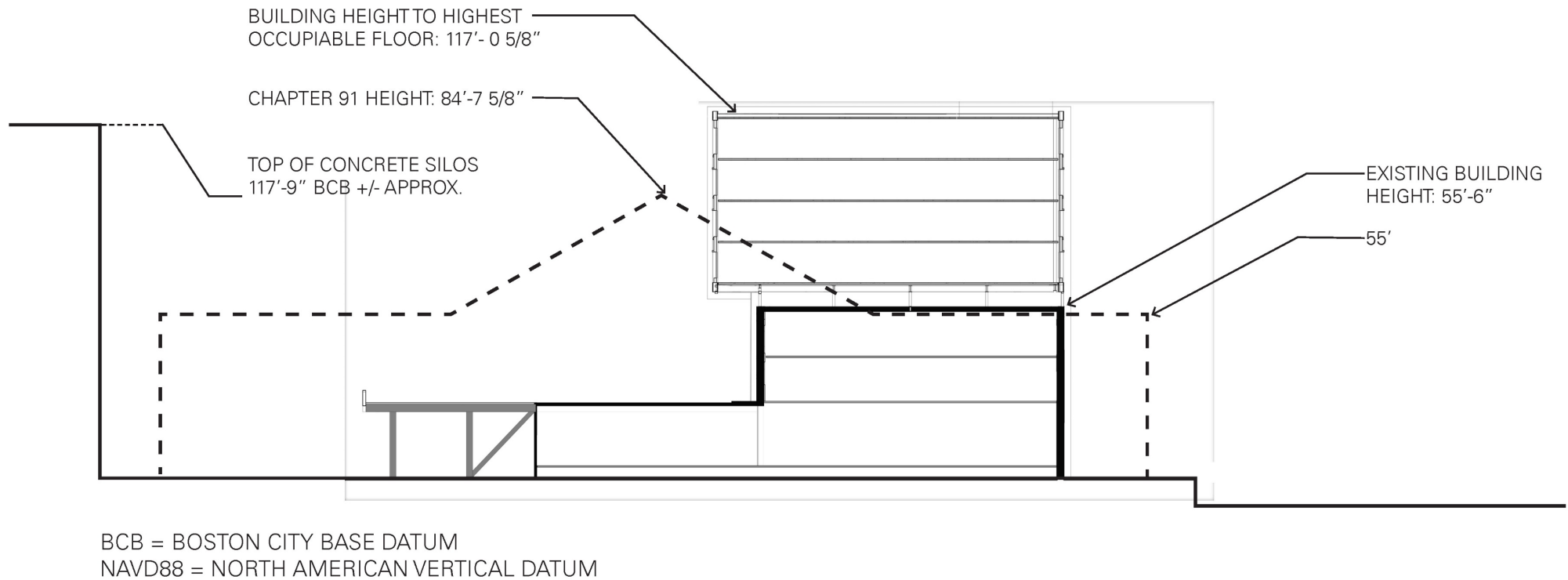
Offsets for these Substitutions are described in Section 5.3.

4.2.3 Building Height

310 CMR 9.51(3)(e) requires that new buildings over the water and within 100 feet of the high water mark shall not exceed 55 feet in height above grade. Beyond 100 feet of the project shoreline, building height may increase one foot for every two feet landward of the project shoreline. As shown on [Figure 5](#), the resulting height allowed within the Planning Area would range from 55 feet to approximately 84 feet above grade, though because the Planning Area is largely located on a pier with the flowed tidelands extending along three sides, the height restriction would likely make it infeasible to construct any vertical addition to the structure.

At the easterly end of the pier, the proposed vertical addition complies with the regulatory height standard and no substitution for those portions of the building is proposed.

BUILDING HEIGHTS | WEST ELEVATION



This WDP proposes allowable building height along the south and north aprons up to 118 feet above grade to the top of the highest occupiable floor and no more than 132 feet above grade overall, inclusive of mechanical penthouses.

Wind impacts related to new construction are generally measured relative to areas where there is currently, or anticipated to be, pedestrian activity. The Project includes a vertical addition to an existing building, with minor areas of new construction at the ground level to improve access to the building. Given the location of the building at the end of a pier within the DPA, pedestrian activity is primarily limited to pedestrian pathways along the south apron and parking deck, and viewing areas on the east apron and parking deck. Based on pedestrian level wind impacts analyzed⁸ for the Project, additional impacts to pedestrian level wind conditions around the Planning Area are anticipated to be below the Boston Planning & Development Agency (BPDA) wind gust criteria and no locations are anticipated to be categorized as dangerous. Similarly, based on shadow analyses⁹ developed for the proposed building massing, and given the orientation of the Planning Area and the location of the public access areas, shadow impacts are anticipated to be minimal.

Because the additional building height is expected to have only minor impacts on pedestrian-level wind or shadow, no Offset is proposed.

^{8.} A pedestrian level wind impact analysis for the proposed condition was performed by Rowan Williams Davies & Irwin Inc. on May 31, 2021.

^{9.} A shadow analysis of the proposed massing, using the applicable Azimuth and Altitude data for Boston, was conducted during three time periods (9:00 a.m., 12:00 p.m., and 3:00 p.m.) during the vernal equinox (March 21), summer solstice (June 21), autumnal equinox (September 21), and winter solstice (December 21), and an additional analysis at 6:00 p.m. during the summer solstice and autumnal equinox.

Section 5.0

Offsets for Proposed Substitutions

5.0 OFFSETS FOR PROPOSED SUBSTITUTIONS

For new Nonwater-dependent development projects, proposed Substitutions of regulatory standards under the MOU may require mitigating Offsets if those Substitutions result in impacts greater than that which would result from the application of the Regulations. As discussed in the previous section, this WDP proposes Substitutions allowing for improvements in the Planning Area in a manner that will not give rise to severe conflict with port operations or excessive consumption of port space, either directly or indirectly, nor will they result in a net loss of Maritime Projects or WDIUs in the Planning Area. The Substitutions proposed in this WDP provide the framework for a mixed-use project that provides a series of improvements within the Planning Area to directly and indirectly benefit the operations of Maritime Projects and WDIUs within and proximate to the Planning Area. The Offsets are intended to complement the Public Benefits also provided by the Project, as described in Section 6.0.

Fundamentally, the Substitutions are the basis by which the Project will increase the capacity of the Planning Area to host Maritime Projects and WDIUs through improvements to the berthing facilities along the pier's south apron, the improvement of the Black Falcon Avenue/Drydock Avenue intersection, the associated improvements to and expansion of GTA 2, and other infrastructure improvements that support Maritime Projects and WDIUs. The Project allowed by these Substitutions also helps to ensure the pier's longevity through additional revenue to Massport to support port operations and infrastructure in the Planning Area.

The following section describes Offsets intended to mitigate, compensate, or otherwise offset adverse effects on water-related public interests related to the Substitutions described in Section 4.2.

5.1 Use of Tidelands within Designated Port Area

As described in Section 4.2, tidelands within DPAs are intended to host fill or structures for any WDIU and accessory uses thereto. Use of tidelands within DPAs is also intended to preserve the capacity of those tidelands to host WDIUs by, among other things, limiting the type, duration, and location of other uses not considered Water-dependent Industrial.

The following Offsets ensure that provisions of this WDP allowing for greater density of uses other than Maritime Projects and WDIUs within the Planning Area do not unreasonably diminish the capacity of the tidelands to accommodate Maritime Projects and WDIUs and, in fact, enhance functionality of the Planning Area for such uses.

The required Offsets are as follows:

- (1) At least 175,000 sf of the building's ground floor, second floor and third floor shall be used for Maritime Projects and WDIUs. The Ground Lease will require that if the Tenant is unable to identify sub-tenants whose principal use comprises one or more Maritime Projects or WDIUs to rent ground floor space or portions thereof, despite an affirmative marketing effort and commercially reasonable efforts with respect thereto, the Tenant may sublease any such vacant ground

floor space for Temporary Use by warehousing, trucking, parking, and other industrial and transportation sub-tenants, in accordance with Section 5.6 of the MOU.

If any portion of the approximately 175,000 sf on the ground floor, second floor or third floor is subleased as a Temporary Use, the next available and appropriate vacant space then becoming available on the ground floor, second floor or third floor of the building shall be made available to Maritime Projects and WDIU sub-tenants. The Ground Lease requires that this provision remain in effect until Maritime Projects and WDIU sub-tenants occupy not less than 175,000 sf of the Building.

(2) The Tenant will provide discounted rents of at least 10% to future Maritime Projects and WDIUs occupying up to 175,000 sf of space on the ground, second, and third floors of the building.

(3) The Project will increase by approximately 55% the size of GTA 2, thus facilitating ground transportation, vehicular circulation, and safer cruise ship operations in general.

(4) The Tenant will remove existing curbing on the south apron and resurface the apron to facilitate cruise and maritime operations.

(5) The Project will create a covered and secured space of approximately 500 sf feet in size beneath the new parking ramp for Massport's storage of GTA 2 support supplies (e.g., bollards, tents, signage, etc.).

(6) Contemporaneously with the commencement of construction of the Project, the Tenant will assume certain pier maintenance/repair tasks that are currently the legal obligations of Massport, thereby freeing up Massport resources for other Maritime Projects and operations.

5.2 Facilities of Private Tenancy

Absent the Substitution described in Section 3.3.1, Nonwater-dependent Facilities of Private Tenancy would not be permitted at ground level within 100 feet of a project shoreline.

The limited amount of such uses to be allowed under the proposed Substitution are anticipated to serve all sub-tenants of the building and are important elements of the Project.

In consideration of this Substitution, the required Offsets are as follows:

- (1) Two new, universally accessible public restrooms will be provided beneath the reconfigured parking ramp. These restrooms will supplement the existing public restroom at the east end of the building and will have broader availability, including while cruise ships are berthed. The new

public restrooms can be accessed from outside the building, potentially allowing their hours of operation to be extended beyond customary business hours¹⁰. The existing public restroom at the east end of the building will remain available during customary business hours, subject to periodic port security restrictions.

- (2) The Tenant will construct new pedestrian pathways along the westerly side of the building, including the installation of curbing, sidewalks, and a clearly delineated crosswalk at the site access drive, to provide safe access to the pedestrian walkway along the south apron leading to the public viewing area and fishing cleaning station at the east end of the pier.
- (3) New wayfinding signage will be installed along public pedestrian pathways, the existing public viewing area at the east end of the pier will be resurfaced and improved, and the fish cleaning station will be rehabilitated and modestly expanded.

5.3 Open Space/Lot Coverage

The regulatory standard at 310 CMR 9.51(3)(d), requiring that 50% of a tidelands site be open space, is generally intended to ensure that buildings for Nonwater-Dependent Use will be relatively condensed in footprint, in order that an amount of open space commensurate with that occupied by such buildings will be available to accommodate Water-dependent activity, as appropriate for the area.

The proposed increase in lot coverage at the Planning Area, a modest expansion, is largely a function of expanding the elevated parking deck. This expansion was selected because it preserves ground-level space for Maritime Projects and WDIUs on the north apron and maintains access for heavy trucking to the loading bays while providing a sheltered area for the loading/unloading of trucks and storage of materials. The other additions to the building footprint improve pedestrian safety for sub-tenants and others accessing the building and viewing area and, additionally, permit access to these areas when access to the south apron is restricted for port safety. In consideration of this Substitution and to enhance public use of the Planning Area, the required Offset is as follows:

- (1) A new public viewing area will be constructed at the easterly end of the second-level parking deck. This new public viewing area will provide seating, lighting, trash receptacles and other appropriate amenities at a safe location that allows the public to enjoy a unique perspective of maritime activities within the Planning Area, Boston Harbor, and nearby at the Boston Ship Repair drydock.

¹⁰ Customary business hours are 9:00 a.m. to 5:00 p.m., Monday through Friday. It is anticipated that the new public restrooms will be available during these hours seven days per week, when cruise ships are not berthed at 88 Black Falcon.

Section 6.0

Public Benefits for Nonwater-Dependent Uses

6.0 PUBLIC BENEFITS FOR NONWATER-DEPENDENT USES

This WDP proposes Nonwater-dependent Uses that are compatible with existing and reasonably foreseeable Maritime Projects and WDIUs within the Planning Area. The Waterways Regulations and Section 3.2 C. of the MOU require that projects containing such uses provide Public Benefits to compensate for the dedication of land to Nonwater-dependent Use. Accordingly, this WDP proposes Public Benefits that include facilities and financial support for Maritime Projects and WDIUs within and adjacent to the Planning Area as well as support for public transportation within the South Boston DPA.

6.1 Existing Public Benefits

The Tenant currently maintains the following public facilities as required by DEP License No. 13408. These public facilities are considered the “baseline condition” with regard to public benefits in the Planning Area:

- 1) a five-foot-wide public access walkway along the pier’s south apron;
- 2) a viewing area at the easterly end of the pier with interpretive signage, binoculars, lighting, trash receptacles, and benches;
- 3) a fish cleaning station located at the easterly end of the pier, for which running water and trash receptacles are provided;
- 4) signage notifying the public of the availability of the public access walkway, public viewing area and the fish cleaning station; and
- 5) a public restroom located on the ground floor at the easterly end of the building.

Another of Massport’s goals for this WDP is to provide safe public access to the Planning Area and its public facilities to the extent feasible in a manner consistent with the intensity of WDIU activity and the maritime operations in the DPA and the security protocols necessitated by port operations. As described in Section 3.2, the Project will rehabilitate and modestly expand the existing public facilities, including a public access walkway along the south apron, a harbor viewing area and a fish cleaning station at the easterly end of the pier. In addition, accessibility improvements in the public realm will be implemented to ensure that access to the Planning Area and building is available to all. Finally, a new public viewing area will be created on the parking deck level with appropriate amenities that will enable the public to enjoy panoramic views of Boston Harbor.

6.2 Proposed Public Benefits

6.2.1 *Support for Water-Dependent Industrial Uses*

The Tenant will expend approximately \$6,000,000 to construct improvements to pedestrian and vehicular access and circulation (including demolishing the existing Coastal Cement dispatch facility and constructing a new dispatch facility in a more northerly location to make these improvements possible). These pedestrian and vehicular circulation improvements include the

reconstruction of the intersection of Drydock Avenue, Black Falcon Avenue, and the vehicular access drive, realigning its geometry to create a safe, more functional four-way intersection for pedestrians, bicyclists, and vehicles (including heavy trucks accessing Coastal Cement and the loading docks on the north apron), as well as MBTA buses and buses for cruise ship passengers. The redesign of the intersection will include new ADA-compliant curb ramps, sidewalks, crosswalks, and a pedestrian sidewalk along the site driveway to the building entrance. Collectively, these improvements will reduce and resolve conflict among the various users of the Planning Area by creating clearly defined areas for each use and further improve site access for trucks arriving at the Coastal Cement facility and those accessing the loading bays on the north apron. In conjunction with these improvements, the public access facilities will be improved, rehabilitated, and maintained, and new wayfinding signage will be provided. In connection with the Project, the Tenant has also agreed to pay a portion of the design, engineering and construction costs of required electrical upgrades to improve electrical service to 88 Black Falcon.

6.2.2 Support for Water & Ground Transportation Facilities and Services

The Tenant will work collaboratively with the Seaport Transportation Management Association (TMA), the City of Boston and other interested parties and stakeholders in evaluating the feasibility of creating a new water transportation facility and water ferry service at the Pier 10 public open space located within the RLFMP. To that end, and to satisfy all requirements for support of public water transportation and MassDEP's draft "Chapter 91 Policy on Water Transportation in Boston Harbor" for uses and structures within the Planning Area authorized under the Regulations pursuant to this WDP, the Tenant has agreed to contribute and/or expend not less than \$500,000 toward planning, design and engineering efforts that will improve water transportation in the area surrounding the Planning Area.

6.2.3 Public Realm Management Plan

To ensure that Massport's and MassDEP's goals for public access and for preserving and protecting Maritime Projects, WDIUs, and other port-related activities in and surrounding the Planning Area are achieved, a Management Plan will be submitted to MassDEP at least six months prior to the substantial completion of the Project.

The Public Realm Management Plan will contain the following major elements:

- (1) Overall mix of public realm elements and anticipated public uses;
- (2) Overall size (e.g., footprint) of public realm areas; and
- (3) General standards for operations and management of public realm areas.

Massport, in its statutorily mandated role as the steward of the Port of Boston, will ensure the Tenant's implementation of the Public Realm Management Plan. The Public Realm Management Plan will effectively promote public use of Planning Area, consistent with the primary function of the Planning Area for Maritime Projects, WDIUs and other port-related activities in and surrounding the Planning Area.

The Public Realm Management Plan will also include the Tenant's Operations Plan that outlines daily operational details for the building and Planning Area. Based upon the framework provided by the Public Realm Management Plan, the Tenant's Operations Plan will include:

- ◆ Description of the Public Realm (including open space, Facilities of Public Accommodation, and other publicly accessible space, facilities, and amenities available to the public);
- ◆ Summary of the proposed uses, general programming objectives for the public realm, proposed public amenities, and major operational requirements that will promote the public's use and activation of the public realm; and
- ◆ Operational guidelines for the Planning Area to alleviate conflicts between public uses and the Maritime Projects, WDIUs, or other port-related activities in and surrounding the Planning Area.

Section 7.0

Implementation of the 88 Black Falcon Waterfront Development Plan

7.0 IMPLEMENTATION OF THE 88 BLACK FALCON WATERFRONT DEVELOPMENT PLAN

Massport, as both the signatory to the MOU and the landlord under the Ground Lease, will be responsible for ensuring implementation of the specific commitments contained in the WDP. These measures have been incorporated into lease terms to ensure that the Tenant is fully aware of and responsible for carrying out the commitments made under this WDP.

Some of the Offsets require improvements outside the Planning Area boundaries, such as the planned intersection reconstruction at Drydock and Black Falcon Avenues. The responsibility for their implementation rests with the Tenant under the Ground Lease. Massport and EDIC have agreed to enter into an amendment of an existing easement agreement so that the necessary property rights will be in place for the construction by the Tenant of the intersection improvements. In addition, as part of the entitlements process for the Project, the Tenant is responsible for obtaining any other permits and approvals of third parties and governmental agencies (*e.g.*, the MBTA with respect to the planned bus stop improvements) that may be needed to effectuate the same.

It is expected that the Offsets discussed herein will be memorialized in the Chapter 91 license issued for the Project, which license will supersede the existing Chapter 91 license.

Section 8.0

Additional MOU Requirements within the Designated Port Area

8.0 ADDITIONAL MOU REQUIREMENTS WITHIN THE DESIGNATED PORT AREA

This WDP addresses a portion of the Special Planning Area lying entirely within the South Boston DPA. In accordance with the MOU, this WDP provides the following:

Inventory of Existing Uses within Designated Port Area

The existing uses within the DPA Special Planning Area are described in [Attachment B](#), Massport DPA Property List.

Feasibility of Future Maritime Projects and Water Dependent Industrial Uses

The existing Maritime Projects and WDIUs within the Planning Area will continue to operate at existing functional levels during the construction of the Project. In addition, the improvements will not interfere with the operations of Coastal Cement at the Property, in accordance with its license with Massport. Upon its completion, the Project will provide significant enhancements to facilities that support Maritime Projects and WDIUs and are expected to support the continued growth of the Flynn Cruiseport. The range of uses permitted under this WDP and their location primarily on upper floors is compatible with existing and reasonably foreseeable Maritime Projects and WDIUs in the Planning Area. Additionally, the Tenant is committed to ensuring that ongoing operations and reasonably foreseeable expansion of the Coastal Cement facility, adjacent to the Planning Area, can occur unimpeded.

Representation by Massport of Maintenance of Maritime Projects and Water Dependent Industrial Uses

As shown in [Attachment C](#), the Massport DPA Property List, Massport has maintained and will continue to maintain at least 75% of the land uses on the DPA portion of the SPA as Water-Dependent Industrial, Accessory, Maritime Project, and/or Temporary Uses.

Arrangements for Maritime Projects and Water Dependent Industrial Uses at the Property

As noted above, the Project proposed under this WDP will improve facilities that support Maritime Projects and WDIUs within the Planning Area. Accommodations will be made during the construction process to maintain and facilitate the operations of existing Maritime Projects, WDIUs, and Supporting DPA Use sub-tenants.

Assurance by Massport Related to Nonwater-dependent Uses, Waterfront Development Plan

[Attachment D](#) comprises a letter from the Massport Maritime Director assuring Massport's obligation and commitment to maintain not less than 75% of the land uses within the SPA as Water-Dependent Industrial, Accessory, Maritime Project, and/or Temporary Uses. The letter further affirms that Nonwater-Dependent Uses within the Planning Area will not give rise to severe conflict with Port operations or excessive consumption of Port space, whether directly or indirectly, and that the implementation of this WDP will not significantly disrupt any existing Water-Dependent Industrial Uses in areas outside, but proximate to, the Property/Planning Area.

Maritime, Water-Dependent Industrial, Temporary, and Supporting DPA Uses shall be allowed in DPA areas.

As noted above, Maritime Projects and WDIUs will be maintained in the Planning Area.

Section 9.0

Consistency with Massachusetts Office of Coastal Zone Management Policies

9.0 CONSISTENCY WITH MASSACHUSETTS OFFICE OF COASTAL ZONE MANAGEMENT POLICIES

9.1 Coastal Hazards

Coastal Hazards Policy #1

Preserve, protect, restore, and enhance the beneficial functions of storm damage prevention and flood control provided by natural coastal landforms, such as dunes, beaches, barrier beaches, coastal banks, land subject to coastal storm flowage, salt marshes, and land under the ocean.

Natural coastal landforms are not present within the Planning Area. Any such nearby resources will not be affected by the proposed Project and will therefore maintain any existing beneficial functions of storm damage prevention and flood control. The proposed Project avoids impacts to the seawall containing the solid-fill portions of the Planning Area, which is considered a man-made coastal bank as defined under the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.04), and otherwise improves the beneficial functions of storm damage prevention and flood control at the Planning Area by adhering to best practices related to climate preparedness and the impacts of climate-related events in accordance with the Massport Design Guide. The building features that address this resiliency in this design area as follows:

- ◆ The Planning Area is located in the FEMA AE zone (El. 12.00 feet NAVD88 or 18.48 feet Boston City Base (BCB)), which means it is already prone to flooding. With rising seas, it is anticipated to be subject to three to four feet of additional water levels (base flooding) in 2070 (based on current sea level rise projections). Given the anticipated future flood risks, the Project has been designed in conformance with Massport’s Sustainability and Resiliency Design Standards and Guidelines and Floodproofing Design Guide.
- ◆ The existing building’s first floor finished floor elevation (FFE) is located at el. 22.8 feet BCB, which is above the Zone AE Base Flood Elevation (BFE) of 16.46 BCB.
- ◆ The existing building first floor elevation (22.8 feet BCB) is above the BPDA design flood elevation (“DFE”) (19.5 feet BCB). It is not anticipated that sea level rise will affect the building’s internal operations.
- ◆ All critical building infrastructure will be elevated to at least el. 20.50 feet BCB (2070 DFE for critical assets) or higher to provide minimum freeboard of two feet as required for DFE critical infrastructure, including the following:
 - HVAC - Critical MEP/HVAC will be located on the current first occupiable floor at Level 1 or higher and on the upper roof level.
 - Fire Protection - Fire pump, controllers and transfer switch will be located at Level 1 or higher.

- Electrical
 - Electric equipment room will be located on Level 1 or higher.
 - Eversource primary switchgear and primary transformer will also be located on Level 1 or higher.
 - Main switchboards and distribution equipment will be located on Level 1 or higher.
 - Generator serving the building emergency and standby power systems will be located on Level 1 or upper Roof Level.
 - Electrical distribution equipment associated with the generator will be located on Roof Level 1 or higher.
- Building Management System (BMS) - BMS panels and equipment will be located on upper levels.
- ◆ The existing second floor level is approximately elevation 43 feet BCB, approximately 21 feet above the existing Level 1 elevation of approximately 22.8 feet BCB.

In addition, a flood/storm event management plan will be developed to implement operational resiliency measures such as raising elevators and selectively turning off power as needed.

Coastal Hazards Policy #2

Ensure that construction in water bodies and contiguous land areas will minimize interference with circulation and sediment transport. Flood or erosion control projects must demonstrate no significant adverse effects on the project site or adjacent or downcoast areas.

The proposed Project does not include construction in water bodies or construction on contiguous land areas that will interfere with water circulation and sediment transport; therefore, this policy does not apply.

Coastal Hazards Policy #3

Ensure that state and federally funded public works projects proposed for location within the coastal zone will:

- ◆ *Not exacerbate existing hazards or damage natural buffers or other natural resources.*
- ◆ *Be reasonably safe from flood and erosion-related damage.*
- ◆ *Not promote growth and development in hazard-prone or buffer areas, especially in velocity zones and Areas of Critical Environmental Concern.*

- ◆ *Not be used on Coastal Barrier Resource Units for new or substantial reconstruction of structures in a manner inconsistent with the Coastal Barrier Resource/Improvement Acts.*

The proposed Project is not a state or federally funded public works project; therefore, this policy does not apply.

Coastal Hazards Policy #4

Prioritize acquisition of hazardous coastal areas that have high conservation and/or recreation values and relocation of structures out of coastal high-hazard areas, giving due consideration to the effects of coastal hazards at the location to the use and manageability of the area.

The proposed Project does not involve community acquisition of hazardous coastal areas; therefore, this policy does not apply.

9.2 Energy

Energy Policy #1

For coastally dependent energy facilities, assess siting in alternative coastal locations. For non-dependent energy facilities, assess siting in areas outside of the coastal zone. Weigh the environmental and safety impacts of locating proposed energy facilities at alternative sites.

The proposed Project is not an energy facility; therefore, this policy does not apply.

Energy Policy #2

Encourage energy conservation and the use of renewable sources such as solar and wind power in order to assist in meeting the energy needs of the Commonwealth.

The Project will be certified to the Silver level under the LEED rating system, and will incorporate measures to improve resiliency to predicted future climate conditions. The building is being designed with an efficient envelope that minimizes mechanical needs to the extent feasible. The building envelope and mechanical systems are being evaluated as required under the MEPA Greenhouse Gas (GHG) Policy to help determine the feasibility of different envelope configurations and mechanical systems. Incorporation of renewable sources will continue to be evaluated.

9.3 Growth Management

Growth Management Policy #1

Encourage sustainable development that is consistent with state, regional, and local plans and supports the quality and character of the community.

The proposed Project has been designed in consideration of the local environment and, more specifically, the City of Boston “Imagine Boston 2030” and the Metropolitan Area Planning Council “MetroFuture” plans.

Growth Management Policy #2

Ensure that state and federally funded infrastructure projects in the coastal zone primarily serve existing developed areas, assigning highest priority to projects that meet the needs of urban and community development centers.

The proposed Project is not a state or federally funded infrastructure project; therefore, this policy does not apply.

Growth Management Policy #3

Encourage the revitalization and enhancement of existing development centers in the coastal zone through technical assistance and financial support for residential, commercial, and industrial development.

As per above, the proposed Project has been designed in consideration of both the City of Boston “Imagine Boston 2030” and the Metropolitan Area Planning Council “MetroFuture” plan.

9.4 Habitat

Habitat Policy #1

Protect coastal, estuarine, and marine habitats—including salt marshes, shellfish beds, submerged aquatic vegetation, dunes, beaches, barrier beaches, banks, salt ponds, eelgrass beds, tidal flats, rocky shores, bays, sounds, and other ocean habitats—and coastal freshwater streams, ponds, and wetlands to preserve critical wildlife habitat and other important functions and services including nutrient and sediment attenuation, wave and storm damage protection, and landform movement and processes.

The proposed Project does not include any in-water construction and therefore will not affect these coastal wetland resource areas. Nonetheless, the necessary site work will include the installation of a stormwater management system that is compliant with the MassDEP Stormwater Management Policy. The net result of the site activities will be an improvement in stormwater quality and the enhancement of any nearby natural habitats.

Habitat Policy #2

Advance the restoration of degraded or former habitats in coastal and marine areas.

The proposed Project does not require or involve the restoration of degraded or former habitats; therefore, this policy does not apply.

9.5 Ocean Resources

Ocean Resources Policy #1

Support the development of sustainable aquaculture, both for commercial and enhancement (public shellfish stocking) purposes. Ensure that the review process regulating aquaculture facility sites (and access routes to those areas) protects significant ecological resources (salt marshes, dunes, beaches, barrier beaches, and salt ponds) and minimizes adverse effects on the coastal and marine environment and other water-dependent uses.

The proposed Project does not include development of aquaculture; therefore, this policy does not apply.

Ocean Resources Policy #2

Except where such activity is prohibited by the Ocean Sanctuaries Act, the Massachusetts Ocean Management Plan, or other applicable provision of law, the extraction of oil, natural gas, or marine minerals (other than sand and gravel) in or affecting the coastal zone must protect marine resources, marine water quality, fisheries, and navigational, recreational and other uses.

The proposed Project will not involve the extraction of marine minerals; therefore, this policy does not apply.

Ocean Resources Policy #3

Accommodate offshore sand and gravel extraction needs in areas and in ways that will not adversely affect marine resources, navigation, or shoreline areas due to alteration of wave direction and dynamics. Extraction of sand and gravel, when and where permitted, will be primarily for the purpose of beach nourishment or shoreline stabilization.

The proposed Project does not entail either offshore sand and gravel mining or beach nourishment; therefore, this policy does not apply.

9.6 Ports and Harbors

Ports and Harbors Policy #1

Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity, and public health and take full advantage of opportunities for beneficial re-use.

Dredging is not proposed as part of the proposed Project; therefore, this policy does not apply.

Ports and Harbors Policy #2

Obtain the widest possible public benefit from channel dredging and ensure that Designated Port Areas and developed harbors are given highest priority in the allocation of resources.

Dredging is not proposed as part of the proposed Project; therefore, this policy does not apply.

Ports and Harbors Policy #3

Preserve and enhance the capacity of Designated Port Areas to accommodate water-dependent industrial uses and prevent the exclusion of such uses from tidelands and any other DPA lands over which an EEA agency exerts control by virtue of ownership or other legal authority.

The proposed Project will provide new infrastructure to enhance the capacity of the Planning Area and, in turn, the South Boston DPA. This infrastructure includes a substantial increase in the size of GTA 2, creation of a new Massport storage room to support GTA 2 operations, and new public restroom facilities supporting port operations and cruise ship operations, as well as members of the public visiting the Planning Area. Improvements to the pier apron will also improve functionality during cruise ship berthing and more easily accommodate passenger movement onto and off cruise vessels.

Ports and Harbors Policy #4

For development on tidelands and other coastal waterways, preserve and enhance the immediate waterfront for vessel-related activities that require sufficient space and suitable facilities along the water's edge for operational purposes.

As noted in Ports and Harbors Policy #3, the proposed Project will provide new infrastructure to enhance the capacity of the Planning Area to host vessel-related activities. The proposed Project will provide significant enhancements to the south apron, as well as a substantially larger ground transportation area for cruise ship operations, new storage space for equipment used by Massport on cruise days, additional public restrooms, and improvements to the surface of the south apron to improve the functionality of equipment deployed on cruise days and to better accommodate the docking of large cruise ships. Below-grade maintenance of the pier will also be assumed by the Proponent in concert with construction of the building addition. The proposed Project includes a new vehicular access ramp to the second-level parking deck that will be aligned to create additional space at the ground level to allow for an approximately 55% expansion of GTA 2.

Ports and Harbors Policy #5

Encourage, through technical and financial assistance, expansion of water-dependent uses in Designated Port Areas and developed harbors, re-development of urban waterfronts, and expansion of physical and visual access.

The additional square footage created by the proposed Project will provide financial support (through the payment of additional ground rent) for Massport's maritime operations within the Planning Area and elsewhere in the South Boston DPA.

9.7 Protected Areas

Protected Areas Policy #1

Preserve, restore, and enhance coastal Areas of Critical Environmental Concern, which are complexes of natural and cultural resources of regional or statewide significance.

The Planning Area is not located within an Area of Critical Environmental Concern; therefore, this policy does not apply.

Protected Areas Policy #2

Protect state designated scenic rivers in the coastal zone.

The Planning Area is not located in proximity to a state designated scenic river; therefore, this policy does not apply.

Protected Areas Policy #3

Ensure that proposed developments in or near designated or registered historic places respect the preservation intent of the designation and that potential adverse effects are minimized.

The Planning Area is located within the former Boston Army Supply Base (BOS.RT), an area included in the Massachusetts Historical Commission's (MHC) Inventory of Historic and Archaeological Assets of the Commonwealth. MHC will review the Project contemporaneously with Massachusetts Environmental Policy Act review.

9.8 Public Access

Public Access Policy #1

Ensure that development (both water-dependent and nonwater-dependent) of coastal sites subject to state waterways regulation will promote general public use and enjoyment of the water's edge, to an extent commensurate with the Commonwealth's interests in flowed and filled tidelands under the Public Trust Doctrine.

The Planning Area is located within the South Boston DPA, and during periods in which cruise ships are berthed at the Property, access to the south apron is strictly controlled by Massport Police in accordance with U.S. Coast Guard regulations. To the extent that public access can be safely provided within the working port environment on and surrounding the Planning Area, the proposed Project minimizes impacts to public use and enjoyment of the water's edge. The proposed Project will include new, ADA-compliant sidewalks along a portion of Dry Dock Avenue

adjacent to the Planning Area and clearly defined pedestrian crosswalks at the intersection of Dry Dock Avenue and Black Falcon Avenue. The vehicular entrance to the Planning Area will also be realigned and pedestrian access ways across the vehicular entrance and leading to the south apron will be clearly delineated to improve pedestrian safety. New pedestrian access to the building will be provided at the northwest corner of the building, allowing sub-tenants to safely enter the building when access to the south apron is restricted by Massport Police. A new public viewing area will be constructed at the easterly end of the second-level parking deck. This new public viewing area will provide seating, lighting, trash receptacles and other appropriate amenities at a safe location that allows the public to enjoy a unique perspective of maritime activities within the Planning Area, Boston Harbor, and nearby at the Boston Ship Repair drydock.

Public Access Policy #2

Improve public access to existing coastal recreation facilities and alleviate auto traffic and parking problems through improvements in public transportation and trail links (land- or water-based) to other nearby facilities. Increase capacity of existing recreation areas by facilitating multiple use and by improving management, maintenance, and public support facilities. Ensure that the adverse impacts of developments proposed near existing public access and recreation sites are minimized.

As noted in Public Access Policy #1, the Planning Area is located within the South Boston DPA and, when cruise ships are berthed, access is strictly controlled by Massport Police. The south apron is being improved by removing ground-level obstructions that interfere with cruise ship operations. Beyond the public access amenities authorized by DEP License No. 13408, new permanent infrastructure and other improvements to accommodate expanded public access along the south apron are incompatible with on-going maritime operations within the Planning Area. The north apron is in continuous use by heavy trucking and freight handling operations. Along with those uses, the north apron is utilized by Coastal Cement for the docking and unloading of barges delivering cement. Public access to the north apron is incompatible with those uses.

To the extent that public access can be safely provided within the working port environment on and surrounding the Planning Area, the proposed Project minimizes impacts to existing public access areas.

Public Access Policy #3

Expand existing recreation facilities and acquire and develop new public areas for coastal recreational activities, giving highest priority to regions of high need or limited site availability. Provide technical assistance to developers of both public and private recreation facilities and sites that increase public access to the shoreline to ensure that both transportation access and the recreation facilities are compatible with social and environmental characteristics of surrounding communities.

The Planning Area is not suitable for coastal recreation activities. However, public access to the Planning Area is expected to be provided consistent with protocols necessary for safe maritime operations and other activities. The existing fish cleaning station and viewing point at the eastern end of the Project Site will be rehabilitated, modestly expanded, and maintained. Approximately 2,700 sf of new public open space will be provided at the eastern end of the parking deck.

9.9 Water Quality

Water Quality Policy #1

Ensure that point-source discharges and withdrawals in or affecting the coastal zone do not compromise water quality standards and protect designated uses and other interests.

The proposed Project does not propose new point source discharges or withdrawals. A stormwater management system will be constructed that will comply with the MassDEP Stormwater Management Policy and also satisfy regulatory requirements set forth by DEP under the Massachusetts Wetland Protection Act and by the US EPA under the US Clean Water Act (33 U.S.C. 1341 *et seq.*). Construction of the stormwater management system, in conjunction with the implementation of best management practices (“BMPs”) and observance of the MassDEP Policy, is anticipated to result in an improvement to existing conditions of the Planning Area.

Water Quality Policy #2

Ensure the implementation of nonpoint source pollution controls to promote the attainment of water quality standards and protect designated uses and other interests.

The nonpoint discharge associated with the Planning Area is stormwater runoff. Currently, the Planning Area consists entirely of impervious pavement used primarily for site access, vehicular parking and circulation, and maritime operations. The post-development volume and rate of stormwater runoff will be less than existing conditions and a long-term stormwater Operations and Maintenance Plan will be implemented at the Property.

Water Quality Policy #3

Ensure that subsurface waste discharges conform to applicable standards, including the siting, construction, and maintenance requirements for on-site wastewater disposal systems, water quality standards, established Total Maximum Daily Load limits, and prohibitions on facilities in high-hazard areas.

This policy is not applicable, as no subsurface waste discharge is proposed. The proposed Project will be serviced by sanitary sewer mains, with regional treatment provided by the Massachusetts Water Resource Authority.

Attachment A

Massport/MassDEP South Boston Memorandum of Understanding

SOUTH BOSTON
March 15, 2001

MEMORANDUM OF UNDERSTANDING

between

Massachusetts Port Authority

and

**The Commonwealth of Massachusetts
Department of Environmental Protection**

This Memorandum of Understanding ("MOU") entered into as of March 15, 2001 by and between the Massachusetts Port Authority ("Massport") and The Commonwealth of Massachusetts Department of Environmental Protection ("DEP") relative to the licensing of certain projects on certain properties owned by Massport in South Boston:

WHEREAS, Massport is a body politic and corporate created by Chapter 465 of the Acts of 1956, as amended (the "Enabling Act"), to engage in, *inter alia*, the operation, maintenance and improvement of the Port of Boston;

WHEREAS, the DEP is an agency of the Commonwealth of Massachusetts created pursuant to M.G.L. Ch. 21, authorized to administer the provisions of M.G.L. Ch. 91, §1 through 63, commonly known as the Public Waterfront Act ("Ch. 91 ");

WHEREAS, pursuant to the authority contained in § 18 of said Ch. 91, the DEP has promulgated regulations codified at 310 CMR 9.00 et seq. (the "Regulations");

WHEREAS, pursuant to §4C of the Enabling Act, Massport and *inter alia*, the DEP are authorized and empowered to enter into agreements furthering the purposes of the Enabling Act, which include, but are not limited to, the operation and development of the Port of Boston and other property owned by Massport;

WHEREAS, §6 of the Enabling Act provides that, although the DEP may "issue licenses and permits for filling, dredging, building of structures or excavating within the Port of Boston,...no such licenses or permits shall be required to be obtained by [Massport]";

WHEREAS, §9.03(3) of the Regulations states that Massport may undertake "without written authorization in the form of a license or permit from the Department ... any project consisting entirely of water-dependent industrial uses or accessory uses thereto on previously filled or flowed tidelands within the Port of Boston;"

WHEREAS, §9.03(3) of the Regulations provides that "Massport shall obtain a license or permit pursuant to M.G.L. c. 91 for any project consisting entirely of uses other than water-dependent industrial uses";

WHEREAS, §9.03(3) of the Regulations further provides that the DEP and Massport may enter into agreements to further clarify the DEP's jurisdiction under Ch. 91 for certain activities undertaken on Massport land that include Water-dependent Industrial or Accessory Uses and Nonwater-dependent uses;

WHEREAS, Massport has identified Special Planning Areas within the Massport Properties in South Boston where it may undertake future projects that include both Water-dependent Industrial Uses and Nonwater-dependent Uses;

WHEREAS, Massport has invested well over \$100,000,000 in the past ten years to provide the necessary infrastructure to facilitate the water-borne transportation of freight and passengers;

WHEREAS, Massport is endeavoring to undertake mixed use development on certain portions of its land holdings in order to generate revenues sufficient to help subsidize substantial capital investments in and operating costs of Port facilities including Conley Container Terminal, the Black Falcon Cruise Terminal, and the Massport Marine Terminal;

WHEREAS, Massport will continue to maintain the functions of the Designated Port Areas and will protect deep water berths, channels and transportation infrastructure necessary to support the operations of the Port of Boston and maintain its competitive position in the future;

WHEREAS, Massport has undertaken extensive planning in concert with the City of Boston, community representatives and others to create a comprehensive strategy for investment and development of its properties in South Boston, as articulated in the joint City of Boston/Massport Port of Boston Economic Development Plan, the Port of Boston Competitiveness Task Force Report and Massport's Commonwealth Flats Strategic Plan;

WHEREAS, the DEP and Massport recognize the importance of establishing an agreement with respect to the confirmation by the DEP of Massport's compliance with Ch. 91 for activities on certain Massport Properties hereinafter described;

WHEREAS, Massport will obtain licenses from DEP for all activities on the Massport Properties unless exempt by statute, regulation or this MOU;

NOW, THEREFORE, Massport and the DEP agree that, with respect to the Massport-owned properties described herein, the terms of this MOU shall govern the licensing by DEP of certain Projects, as defined below.

Article I
Definitions

As used in this MOU, the following terms shall have the definitions set forth below:

- A. "Accessory Use" means a use customarily associated with and necessary to accommodate principal Water-dependent Industrial Uses. Such Use must be integral in function to the construction or operation of Water-dependent Industrial Uses, or provide related goods or services to persons primarily engaged in such Uses, and be commensurate in scale with the operations of Water-dependent Industrial Uses in the DPA area. Examples of such Accessory Uses include, but are not limited to, access and interior roadways, surface and/or above-and below-grade structured parking facilities, administrative offices and other facilities providing services to Water-dependent Industrial Uses, and office or lodging facilities exclusively serving Water-dependent industrial uses. Uses that may not be determined to be Accessory Uses include, but are not limited to, general office, general hotel and residential facilities, and major retail establishments.
- B. "Airport" means Logan International Airport, located in East Boston.
- C. "Applicable Regulatory Performance Standards" mean the provisions of the Regulations found at 310 CMR 9.31, 9.32, 9.33, 9.35(1), (2), (3) and (6), 9.37, 9.38, 9.39, 9.40, 9.51, 9.52, and 9.53, for Projects in and outside the DPA, and 9.35(5) for Projects outside the DPA.

D. "Height" or "Height of Building" shall mean the vertical measurement of a structure from the surface on the land or pier on which the structure will be constructed to the peak of the roof, excluding however, any mechanical structures, equipment, architectural features or other facilities that are not intended for habitation.

E. "Maritime Projects" means Projects related to the use and operation of the Port of Boston, including but not limited to facilities related to intermodal transportation of goods shipped by sea, bulk cargo and petroleum facilities, seafood processing facilities, terminals and facilities for commercial and charter fishing, water transportation and other commercial passenger vessel operations, including cruise ship, charter cruises, water taxis, water shuttles, Boston Harbor Islands shuttles and commuter services.

F. "Massport Properties" means those properties owned or leased by Massport or leased by Massport to tenants of Massport, which constitute Commonwealth Tidelands, Flowed Tidelands or Filled Tidelands other than Landlocked Tidelands, or are located within a Designated Port Area (hereinafter, a "DPA"), as those terms are defined in the Regulations, located in the South Boston area of the City of Boston as such properties are more particularly identified on Exhibit A attached hereto and made a part hereof.

G. "Offsets" means those activities, uses, or structures included in a Project to compensate for the application of Substitutions under this MOU and impacts resulting from such Substitutions which are greater than impacts which would result from application of the requirements of the Regulations. Where offsets are required by this MOU, they are to be provided in addition to any Public Benefits which may be required to compensate for the use of Filled or Flowed Tidelands for Nonwater-dependent Uses. Such Offsets may be:

- a) numeric, in-kind offsets;
- b) qualitative, out-of-kind offsets, provided there is a reasonable proportionality, geographic proximity and temporal proximity so that the public benefits outweigh the detriments within the same area and time frame;

- c) offsets that are appropriate for the scale and density of existing structures, taking into account the location of the Project Area in an urban community; and
- d) offsets that appropriately reflect the relationship between proposed structures and the waterfront.

If Substitutions allowing Nonwater-dependent Uses in the DPA portion of the Special Planning Area are exercised, Offsets involving the construction or operation of Water-dependent Industrial Use Projects or Maritime Projects in the DPA, or the provision of financial support for such projects or uses, shall be proposed, although Offsets outside of the DPA may be proposed in addition. Any provision of Offsets in the DPA shall not create adverse impacts on the operations of the Designated Port Area.

Where offsets outside of the DPA are proposed, offsets may include, but are not limited to, the creation, development or support of public purpose uses and structures, such as cultural facilities, educational facilities, additional on-site or off-site parks, public art, museums, cultural or other special public destination facilities, transportation facilities or services, off-site harbor walks, additional on-site or off-site open space or greater activation of open space in excess of that required in a Waterfront Development Plan; public pedestrian facilities in excess of those required in a Waterfront Development Plan; promotion, support and maintenance of public facilities, water shuttles to the Boston Harbor Islands or elsewhere in Boston Harbor; the management and/or support for or financial support of public events and activities which help activate the waterfront; and other similar uses or structures or programs described in the Waterfront Development Plan to mitigate or otherwise ameliorate the impact of development of Nonwater-dependent Uses on the Massport Properties. Reductions in wind or shadow impacts below those impacts which would be experienced by the application of the Regulations to a theoretical structure on the Project site may also be considered as an Offset. These Offsets may include the open space provided in connection with the creation of the so-called D Street Open Space authorized by the Written Determination for the World Trade Center, issued by DEP on August 16, 1995.

H. "Project" means any structure, activity or use that is proposed by Massport or a private entity proposing to act under a ground lease of the Massport Properties, for new construction or Substantial Structural Alteration

on the Massport Properties, unless specifically excluded from the scope of this MOU, as set forth below.

I. "Public Benefits" means those features incorporated into a Project to compensate for the use of Filled or Flowed Tidelands for Nonwater-dependent Uses and structures. Where proposed for inclusion within the DPA portion of the Special Planning Area, Public Benefits shall include facilities or financial support for Water-dependent Industrial Uses or non-recreational water-based activities, such as rebuilding or constructing additional pier heads, bulkheads, aprons and fender systems, repairs to the dry dock, implementing elements of the South Boston Transportation Study's recommendations for truck route improvements, dredging to support maritime activities, increasing or improving paved cargo handling surfaces and other lay down areas, providing supporting structures or services for cargo or commercial fishing vessels, ferries, cruise ships and water shuttles, or otherwise improving the freight handling capacity of the Port of Boston. Waterfront walkways, small-scale parks and observation areas may be appropriate in the DPA portion of the Special Planning Area, provided that they will not interfere with any existing or planned Water-dependent Industrial Uses. Any provision of Public Benefits in the DPA shall support Maritime and Water-dependent Industrial activities within the DPA wherever feasible and not create adverse impacts on the operations of such Designated Port Area.

Where proposed for inclusion outside of a DPA, such Public Benefits may include, but are not limited to, facilities that promote active use of the Project shoreline, such as boat landing docks and launching ramps, marinas, fishing piers, waterfront boardwalks, esplanades, walkways, parks, plazas, observation areas, facilities which support water-based activities such as ferries, cruise ships, water shuttles, excursion/charter/rental docks, and community sailing facilities and other facilities which support and/or promote active use of the Project Shoreline and support water-based activities. These Public Benefits may include the open space provided in connection with the creation of the so-called D Street Open Space authorized by the Written Determination for the World Trade Center, issued by DEP on August 16, 1995.

J. "Substitutions" means the substitution of the dimensional and use requirements set forth hereunder for those set forth in the Regulations regarding open space, set backs, water-dependent use zones, ground floor Facilities of

Public Accommodation, Facilities of Private Tenancy over Flowed Tidelands, and Height limitations.

All capitalized terms used herein and not specifically defined above shall have the definitions set forth in the Regulations.

Article 2
General Provisions

2.1. Applicability of MOU. As the development of the Massport Properties will be undertaken on an integrated basis, including a combination of Water-dependent Industrial uses, Maritime Uses, Water-dependent Uses and Nonwater-dependent Uses, except as specifically excluded in Section 2.2 of this MOU, the terms and provisions of this MOU shall govern and apply to Projects on the Massport Properties which do not consist solely of Water-dependent Industrial Uses, Maritime Projects or Accessory Uses. The terms of this MOU shall not apply to structures, projects, or properties owned, operated, developed or leased by Massport on land not contained within the Massport Properties identified on Exhibit A hereto. Notwithstanding the foregoing, Massport may elect to identify an individual non-exempt Project which shall be subject to licensing pursuant to the provisions of 310 CMR 9.00 et seq. or to the provisions of this MOU by written notice to DEP.

Projects which are not exempt from licensing requirements pursuant to Section 2.2 shall be required to obtain a Ch. 91 license in accordance with the requirements of Articles 4 or 5 hereof.

2.2. Projects Not Requiring a License. Notwithstanding anything to the contrary contained in this MOU, in no event shall the terms and provisions of this MOU, apply to or govern the following:

A. all structures, Projects and activities specifically exempted from Ch. 91 and the Regulations pursuant to Section 9.03(3) of the Regulations including:

(1) any Project consisting entirely of Water-dependent Industrial Uses, including Maritime Projects, or Accessory Uses on previously Filled or Flowed Tidelands within the Port of Boston; or

(2) any Project authorized pursuant to the Enabling Act on previously Filled Tidelands within the geographic boundary of the Airport, so long as it is operated as an airport;

B. The continuation in use of any Project or structure on the Massport Properties, whether owned or leased by Massport or leased by Massport to tenants of Massport, existing as of October 4, 1990 and for which no unauthorized structural alteration or change of use has occurred since October 4, 1990, provided said Project or structure:

(1) includes Water-dependent Industrial Uses, including Maritime Projects or Accessory Uses;

(2) is any other Project for which a final EIR was certified as adequate and properly complying with M.G.L. Ch. 30, §§61 through 62H, prior to January 1, 1984; or

(3) is any Project or structure in existence as of the date of this MOU for which DEP has issued a determination of exemption from the requirements of Ch.91.

C. Maintenance, repair and minor modification of existing structures described in (A) through (E) herein, whether owned or leased by Massport or leased by Massport to tenants of Massport;

D. Any other activity on the Massport Properties otherwise exempt from the requirement of the Regulations pursuant to Section 9.05(3) thereof; and

E. All Projects undertaken by Massport for the use of Massport and in aid of the performance of its governmental functions as provided in the Enabling Act.

No permit, license or approval pursuant to Ch. 91 shall be required for those structures, Projects and activities described in paragraphs (A) through (E) above.

2.3. MOU as Exclusive Regulatory Framework. The terms and provisions of this MOU, including references to the Regulations as modified by a Waterfront Development Plan, shall constitute the exclusive framework under Ch. 91 and M.G.L. c. 21A for regulation of structures and uses on the Massport Properties. The terms and provisions of any Municipal Harbor Plan now or hereinafter approved by the Executive Office of Environmental Affairs shall not govern the development, use or dimensional requirements of Projects on the Massport Properties.

Article 3
Massport Properties Waterfront Development Plan

3.1. Development of Waterfront Development Plans. Massport may develop and adopt one or more Waterfront Development Plans (the "Waterfront Development Plans") for certain portions of the Massport Properties known as the "Special Planning Area" shown on Exhibit B hereto, the adoption of which shall be subject to the review and approval process set forth in Section 3.3 below. Such Waterfront Development Plans, once approved, shall be used by Massport and DEP in connection with the licensing of future Projects undertaken on Massport Properties under this MOU. The Waterfront Development Plan(s) may be developed and adopted by Massport simultaneously or in sequence.

3.2. Waterfront Development Plan Elements. The Waterfront Development Plan(s) shall set forth criteria, performance standards and guidelines for development applicable to Projects in the Special Planning Area. All of the Massport Properties designated within an area covered by a Waterfront Development Plan shall be treated as a single site or parcel for the purposes of meeting the requirements of this section and licensing pursuant to this MOU. The Waterfront Development Plans shall include:

- A. Planning Analysis. A description of the planning analysis which synthesized the technical data, public input and other information which served as the basis for the proposed Waterfront Development Plan.
- B. Proposed Uses. A description of the proposed uses for the Planning Area. Uses proposed and described shall conform to the standards set forth in Regulations, as set forth in the Applicable Regulatory Performance Standards, unless otherwise specifically allowed in the approved Waterfront Development Plan.
- C. Public Benefits for Nonwater-dependent Uses. If the Waterfront Development Plans include any Nonwater-dependent Uses, the plans shall identify appropriate potential Public Benefits which may be constructed by Massport or its tenants on either the Massport Properties or other properties owned or being leased by Massport, as mitigation for the development of Nonwater-dependent Uses on the Massport Properties. For Projects within a DPA, the Plan shall provide as primary Public Benefits facilities or financial support for Water-dependent Industrial Uses as described in Article 1(I) of this

MOU, and may also include additional Public Benefits either in or outside the DPA. The Waterfront Development Plans shall also contain a methodology for allocating the Public Benefits required for each Nonwater-dependent Use. The Public Benefits shall be developed, constructed or otherwise provided before, after, or simultaneously with development of Nonwater-dependent Uses on the Massport Properties, provided such Public Benefits are developed, constructed or otherwise provided prior to or within a time frame that is reasonably proximate to the development of the Nonwater-dependent Use to which said Public Benefit is allocated but no later than 12 months from the completion of the Project, and, to the extent not fully allocated to a particular Nonwater-dependent Use, the Public Benefits may be applied retrospectively or prospectively as Public Benefits or Offsets for another Nonwater-dependent Use. The Waterfront Development Plan shall describe a methodology for tracking the allocation of Public Benefits and the Offsets described below.

D. Design Requirements. Waterfront Development Plans that include Nonwater-dependent Uses shall identify performance criteria for Nonwater-dependent Uses, including, but not limited to, dimensional guidelines, design guidelines and requirements regarding public and pedestrian access and also identify those criteria which are Substitutions for performance requirements set forth in the Applicable Regulatory Performance Standards.

E. Offsets. Where appropriate for Nonwater-dependent Uses, the Waterfront Development Plans shall identify potential Offsets to mitigate impacts from Substitutions which result in greater impacts than would result from the application of the Applicable Regulatory Performance Standards. Where required, the Offsets shall be developed, constructed or otherwise provided prior to or within a time frame that is reasonably proximate to the development of the Project built with the exercise of a Substitution, but no later than 12 months from the completion of the Project, and to the extent not fully allocated to a particular Project, the Offset may be applied retrospectively or prospectively as an Offset or Public Benefit for another Project. The applications of Substitutions and use of such Offsets, together with the Public Benefits, shall ensure that the Waterfront Development Plan will promote, with comparable or greater effectiveness than the Regulations, the Commonwealth's tidelands policy objectives.

F. Implementation Program. Commensurate with the scope of the Waterfront Development Plan, the Plan shall include an implementation program, which may include provisions in leases and licenses, to ensure ongoing compliance with obligations set forth in said Waterfront Development Plan.

G. Consistency with Coastal Zone Management Policies. The Waterfront Development Plans shall describe the Plan's consistency with all applicable policies of the Massachusetts Coastal Zone Management Program, including the Port and Harbor Infrastructure Policies, Public Access Policies and Management Principles and Growth Management Principles.

H. Accommodation for Redevelopment of Existing Structures. Waterfront Development Plans may include provisions allowing for the redevelopment of existing structures with application of specific dimensional and design guidelines and/or access requirements set forth in the Waterfront Development Plan, provided such redevelopment (i) results in structures with the same or lesser footprint area, and total building volume as the original use and/or structure; (ii) provides appropriate Public Benefits to compensate for the impacts of any new or additional use of filled Tidelands for Nonwater-dependent Use; (iii) provides proportional compensatory Offsets, if such redevelopment results in any greater net impact than the existing use or structure; and (iv) provides public access through the use of a harbor walk to the maximum extent practicable, unless incompatible with Water-dependent Industrial Uses in the area. Any such dimensional and design guidelines may serve as Substitutions under this MOU.

I. Additional Requirements Within the DPA Area. In addition to the elements described in A through H above, any Waterfront Development Plan(s) that incorporate portions of the Special Planning Area lying within the South Boston DPA shall contain:

- (1) an inventory of all currently existing uses within said DPA Special Planning Area. This inventory shall specify the uses by type, in categories, including but not limited to, Maritime and Water-dependent Industrial Uses, Accessory Uses, Supporting DPA Uses, Temporary Uses, and other uses. The inventory shall provide a percentage breakdown by type of use, including an overall calculation of total Water-dependent Industrial Uses, Accessory Uses, Supporting DPA Uses, and Temporary Uses compared to all other Uses;

- (2) an analysis assessing the feasibility of future Water-dependent Industrial Uses, considering the area's existing uses, characteristics and the context of surrounding land uses and activities, and determining whether additional uses are appropriate for the study area.
- (3) a representation by Massport that it shall maintain Water-dependent Industrial Uses, Accessory Uses, Maritime Projects, and/or Temporary Uses on no less than seventy-five percent (75%) of the entire area consisting of those portions of Massport Properties located in a DPA, and a description of those uses which may comprise the remaining twenty-five percent (25%) or less, including Supporting DPA uses and other uses proposed for the Waterfront Development Plan Area. For purposes of this evaluation, Massport shall employ the methodology described in the Boston Marine Industrial Park Master Plan Update submitted to the DEP in July 1998.
- (4) a description of the arrangements to be provided for Water-dependent Industrial Uses to be continued at their current locations or at appropriate alternative locations in the Port of Boston.
- (5) a representation by Massport's Maritime Director that (a) any Nonwater-dependent Projects proposed within the DPA will not give rise to severe conflict with Port operations or excessive consumption of Port space, either directly or indirectly and (b) the implementation of the Waterfront Development Plan shall not significantly disrupt any existing Water-dependent Industrial Uses in areas outside, but proximate to, the Waterfront Development Plan area.
- (6) with respect to any Waterfront Development Plan for the Fish Pier, as shown on Exhibit C, the Plan shall not propose hotel, residential or other short- or long-term overnight occupancy uses, except those exclusively serving Water-dependent Industrial Uses, or general purpose retail facilities not related to Maritime or Water-dependent Industrial Uses.
- (7) notwithstanding the foregoing, Maritime, Water-dependent Industrial, Temporary and Supporting DPA Uses shall be allowed in DPA areas.

3.3. Waterfront Development Plan(s) Preparation, Approval, Amendment.

A. Preliminary Waterfront Development Plan Preparation. To initiate the Waterfront Development Plan process, Massport shall prepare preliminary descriptive materials consistent with the elements set forth in Section 3.2 above, together with any necessary historical or reference maps and/or plans (the "Preliminary Waterfront Development Plan"). Massport shall submit the Preliminary Waterfront Development Plan to the DEP, with a copy to the Massachusetts Office of Coastal Zone Management. Notice of availability of the Preliminary Plan and of the public meeting, shall be provided to Massport's tenants within the Plan area, and Massport shall advise those tenants to notify their subtenants.

1. Within twenty (20) days of receipt by DEP of the Preliminary Waterfront Development Plan, the DEP shall consult with Massport to discuss objectives and plan elements for the Massport Properties.

2. During the twenty (20) day period described in Section 3.3.A(1) above, the DEP shall publish notice of receipt of the Preliminary Waterfront Development Plan in the next available edition of the *Environmental Monitor*, and shall consult with the Massachusetts Office of Coastal Zone Management and other state agencies to evaluate consistency with applicable state agency plans and policies, including applicable CZM policies. If the Director of the Office of Coastal Zone Management determines that the Preliminary Waterfront Development Plan is inconsistent with applicable CZM Policies, the Director shall submit a finding to Massport and DEP indicating the basis for such a determination.

3. For a period of thirty (30) days after publication of notice in the *Environmental Monitor*, DEP and Massport shall accept public comment and shall convene a public meeting to address public comments regarding the elements of the Preliminary Waterfront Development Plan(s).

B. Final Waterfront Development Plan(s) Preparation. After the close of the public comment period referred to in Section 3.3.A above, Massport shall incorporate the reasonable comments received from the DEP and the public into a final Waterfront Development Plan(s) to be presented to the DEP for its

review and approval. Upon receipt of the final Waterfront Development Plan(s), the DEP shall publish notice of receipt of the Final Waterfront Development Plan(s) in the next available edition of the *Environmental Monitor*.

C. DEP Approval of Waterfront Development Plan(s). Not later than forty-five (45) days after the publication of the notice of receipt of the final Waterfront Development Plan(s) by the DEP in the *Environmental Monitor*, the DEP shall approve the Waterfront Development Plan(s), conditionally approve the Waterfront Development Plan(s), or disapprove the Waterfront Development Plan(s). A conditional approval of the Waterfront Development Plan(s) shall specify the conditions of such approval, and a disapproval of the Waterfront Development Plan(s) shall specify the reasons for such disapproval. In its approval, conditional approval or disapproval of the Waterfront Development Plan(s), DEP shall determine:

1. whether the Waterfront Development Plan balances the economic and public benefits of the proposed Plan with Massport's statutory obligation to operate and develop the Port of Boston;
2. whether the Waterfront Development Plan promotes the overall public trust in waterways, taking into account Massport's statutory obligation to operate and develop the Port of Boston, the Commonwealth's public tidelands objectives as embodied in the provisions of 310 CMR 9.00, and the applicable CZM policies;
3. whether the Waterfront Development Plan provides, with equal or greater effectiveness than the Commonwealth's public tidelands objectives embodied in the provisions of 310 CMR 9.00 and applicable CZM policies, Public Benefits and/or Offsets which mitigate, compensate or otherwise offset potential adverse effects on Water-dependent Industrial and Maritime Uses in the Port of Boston; and
4. whether the implementation of the Waterfront Development Plan will serve a proper public purpose, providing greater benefits than detriments to the public rights in the subject tidelands, and that collectively, the private advantages of use are not primary, but merely incidental to the achievement of public purposes, as those purposes are set forth in Ch. 91 and the Enabling Act.

D. Amendments to Waterfront Development Plan(s). The review and approval requirements for amendment of a Waterfront Development Plan(s) shall be the same as those for the initial approval for such plan.

E. Resolution of Disputes. In the event a dispute arises regarding DEP's determination on the Waterfront Development Plan(s), the parties shall engage in mediation in the same manner as described below in Section 5.5. In the event the parties are unable to reach agreement on the content of the Waterfront Development Plans, Massport may elect to withdraw without prejudice all or a portion of the Waterfront Development Plan, or a Project described in the Waterfront Development Plan upon written notice to the Commissioner of the DEP.

Article 4
Licensing of Special Allowed Uses

4.1 Special Allowed Uses. Notwithstanding any other provisions of this MOU to the contrary, the following structures and uses shall be specifically allowed pursuant to this MOU, subject to the conditions and limitations contained in this Article 4, as established in licenses issued pursuant to Sections 5.1 through 5.6 hereof. The DEP shall review applications for licenses for the uses set forth in this Article 4 to determine compliance with 310 CMR 9.32, 9.33, 9.35(1) and (6), 9.37, 9.38(1), 9.39 and 9.40 of the Regulations:

A. The construction of a new commercial restaurant facility on the location of the so-called "Jimmy's Harborside" parcel (parcel E) as shown on Exhibit C, provided that the area of the footprint of the new structure(s) (not including any public pedestrian walkway or harbor walk or transient vessel piers or floats constructed appurtenant thereto) shall not exceed the area of footprint of the present structure, nor shall the Height exceed 55 feet. A new facility on the "Jimmy's Harborside" parcel shall include a harbor walk and a view corridor; and

B. The non-exclusive use of that portion of the water sheet within the Special Planning Area shown on Exhibit C for transient recreational vessel mooring, berths, piers and floats, and supporting structures and facilities thereto, to permit temporary (less than 12 hours) water access

to the restaurant and commercial uses appurtenant thereto. However, such facilities shall not interfere with the use and operations of any existing or proposed Water-dependent Industrial Uses proximate thereto.

4.2 Designated Port Area. Nothing in this MOU is intended to alter the location of the existing boundaries of the South Boston Designated Port Area.

Article 5
Licensing for Non-Exempt Projects

5.1. General Requirements. After the DEP's approval of a Waterfront Development Plan(s) in accordance with Article 3 above, Massport may, from time to time, propose an individual Project or Projects for the Special Planning Area covered by such Waterfront Development Plan(s). If such Project does not require a license, as set forth in Section 2.2 hereof, Massport shall notify the DEP in writing that it will be commencing development of such Project. If such Project is subject to the terms of this MOU as provided in Section 2.1 hereof, Massport or its tenant shall file an application with the DEP in accordance with Section 5.2 below.

5.2. Application: The application for a license under this MOU shall be submitted to DEP by Massport or its tenant on forms provided by the DEP, and meeting the requirements 310 CMR 9.11 of the Regulations (the "Application").

5.3. Notice.

A. Within thirty (30) days of receipt of the Application and the information required in Section 5.2 above, the DEP shall notify Massport, and, if applicable, its tenant, whether the Application meets the minimum submittal requirements or whether additional information is required.

B. Once the DEP determines that the Application meets the minimum submittal requirements, it shall assign a file number to the Project and, in accordance with the Regulations shall publish notice of receipt of a completed Application in the *Environmental Monitor* and shall send notice of the Application to:

1. The City of Boston Conservation Commission, Boston Redevelopment Authority and Harbor Master;
2. The Massachusetts Coastal Zone Management Office; and
3. All abutters to the Project site, identified in accordance with the Regulations.

C. Massport or its tenant shall, upon assignment by the DEP of a file number of the Application and, at its own expense, cause a notice in accordance with the Regulations to be published in one or more newspapers having circulation in the area affected by the Project and shall post such notice at one or more prominent locations on the Project site visible to the public. Massport shall also provide notice of such Application to its tenants located within the relevant Waterfront Development Plan area, and advise such tenants to notify their subtenants.

5.4 Public Hearing. The DEP and Massport shall conduct a public hearing on the application. The hearing shall be noticed in accordance with the Regulations, and shall be conducted no later than forty-five (45) days from the notice in the *Environmental Monitor* provided above.

5.5. DEP Review: Within thirty (30) days of the close of the applicable public comment period, DEP shall review the Application to determine: (i) whether the proposed Project incorporates either directly or in conjunction with the Implementation Program, the Public Benefits and Offsets, if applicable, as set forth in the applicable Waterfront Development Plan; (ii) whether the Project conforms to the Applicable Regulatory Performance Standards and the Substitutions in the approved Waterfront Development Plan; (iii) whether, in the context of the approved Waterfront Development Plan, the Project will serve or contribute to a proper public purpose and provide greater benefit than detriment to the public rights in the subject tidelands; and (iv) in the case of proposed Projects in the DPA portion of the Special Planning Area, whether the proposed Project will result in the required seventy-five (75%) standard described in Section 3.2 above being met. The DEP shall meet with Massport and its tenant, if applicable, to collectively determine the application of the performance criteria and calculation of the 75% requirement. In the event a dispute arises regarding the application of the performance criteria and/or the calculation of the 75% requirement that, after reasonable efforts to negotiate, the parties hereto cannot resolve, said parties hereby agree to pursue mediation, by hiring a mutually acceptable mediator from a agency or firm engaged in the provision of professional mediation services. In the event the parties cannot agree on the same mediator, then upon request of either party, each party shall

designate a mediator within seven (7) days after such a request to designate has been made and the two mediators so designated shall choose a third mediator to conduct the mediation and such choice shall be binding on the parties. If a party fails to designate a mediator as heretofore provided, then the mediator selected by the other party shall be the designated mediator. Mediation shall be undertaken and completed as soon as possible but in no event later than sixty (60) days after the close of the applicable public comment period. The parties shall share equally any costs of mediation.

5.6. Issuance of License. Within sixty (60) days after the close of the applicable public comment period, the DEP shall take action on the Application. Except for temporary licenses, which shall be no more than 10 years, or unless a shorter term is otherwise requested by Massport, the DEP shall issue a license for the Project with a term of sixty-five (65) years, provided it has determined that the requirements of Section 5.5 have been met. Licenses with terms up to ninety-nine (99) years may be issued by DEP if requested by Massport, provided such extended term is deemed appropriate by the DEP in accordance with 310 CMR 9.15(1)(b) (2), (4) and (5), and 9.15(1)(c). Massport may propose a license term for any Project in the applicable Waterfront Development Plan. Any license so issued by DEP shall be recorded in accordance with Section 9.18 of the Regulations.

5.7. Appeals. The appeal of the grant or denial of any license by DEP pursuant to the terms of this MOU shall be governed by and subject to the provisions of Sections 9.17 of the Regulations. The standard for review of any appeal for a license issued pursuant to a Waterfront Development Plan hereunder shall be whether the proposed Project meets the criteria set forth in Section 5.5. For Projects licensed under Section 5.8 hereof, the standard of review of shall be those set forth in the Regulations.

5.8. Projects Outside Approved Waterfront Development Plan Area. If a Project subject to this MOU pursuant to Article 2 hereof, but is not within an area for which a Waterfront Development Plan has been approved, Massport or its tenant shall file an application with the DEP in accordance with Section 5.2, 5.3 and 5.4 hereof. Within 30 days of the applicable comment period, DEP shall review the application to determine compliance with Applicable Regulatory Performance Standards and 9.54 of the Regulations and shall issue a license therefor.

5.9. Emergency Actions. In the event of an emergency situation, as defined in Section 9.20 of the Regulations, Massport and DEP agree to follow the requirements set forth in said Section 9.20 for Massport Projects subject to this MOU pursuant to Section 2.1 hereof. For Projects exempt from this MOU pursuant to Section 2.2 hereof, Massport may take any

action it deems necessary and desirable in connection with an emergency situation, provided it so notified the DEP in writing within ten (10) days thereafter of such action taken.

5.10. Maintenance, Repair and Minor Project Modification. The provisions of Section 9.22 of the Regulations shall apply to maintenance, repair and minor projects modifications for Projects subject to this MOU pursuant to Section 2.1 hereof. Maintenance, repair and minor project modifications for Projects exempt from this MOU pursuant to Section 2.2 hereof shall be made by Massport in its sole discretion, without notice to the DEP.

5.11. Removal of Previously Licensed Structures. The provisions of Section 9.27 of the Regulations shall apply to removal of structures licensed pursuant to this MOU. The removal of structures exempt from this MOU pursuant to Section 2.1 hereof shall be made by Massport in its sole discretion, without notice to the DEP.

5.12. Enforcement. The provisions of Section 9.08 of the Regulations shall apply to all Projects subject to the terms of this MOU pursuant to Section 2.2 hereof.

Article 6 *Miscellaneous*

6.1. Binding Effect. This MOU is a legally binding document having the full force and effect of the law between the parties and shall be enforceable by the signatories hereto in a court of law by equitable relief.

6.2. Applicable Law. This MOU shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts.

6.3. Entire Agreement. This MOU sets forth the entire agreement of the parties hereto with respect to the subject matter contained herein, and no amendment of this MOU shall be effective unless it is in writing and signed by both parties to this MOU. The draft text of any amendment shall be published in the *Environmental Monitor* for a 30 day public review and comment period, and the text shall be published therein upon adoption and made available by the DEP upon request.

6.4. Effective Date of MOU. The terms and provisions of this MOU shall become effective immediately upon execution by the Commissioner of DEP and by a Massport Officer duly authorized by the Massport Board of Directors and no further action shall be required by the parties hereof.

SOUTH BOSTON
March 15, 2001

6.5. No Waiver. The parties agree that nothing in this MOU shall be construed to constitute assent to or assertions by either party that Massport, its agents, tenants, successors or assigns is or is not subject to the jurisdiction or regulatory authority of the DEP for licenses and permits for filling, dredging, building of structures or excavating within the Port of Boston or is otherwise subject to the requirements of Ch. 91 or the Regulations.

6.6. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed delivered hereunder if mailed postage prepaid, or delivered by hand to the following address, or to such other individual or address as may be specified by either of the parties in writing:

If to the DEP: Commonwealth of Massachusetts
Department of Environmental Protection
One Winter Street
Boston, MA 02108
Attention: Commissioner
Attention: Director, Waterways Program

If to Massport: Massachusetts Port Authority
Logan Office Center
One Harborside Drive
East Boston, MA 02116
Attention: Executive Director

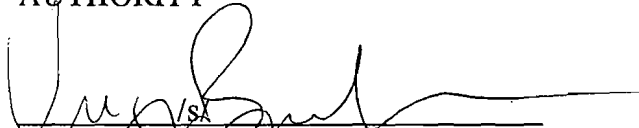
with a copy to: Massachusetts Port Authority
Logan Office Center
One Harborside Drive
East Boston, MA 02116
Attention: Chief Legal Counsel

6.7. Paragraph Heading. The paragraph headings in this MOU are for convenience and reference only, and shall not be used to interpret, clarify, limit or amend the contents or meaning of any provision.

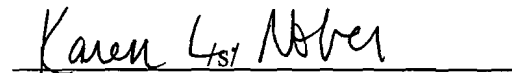
SOUTH BOSTON
March 15, 2001

IN WITNESS WHEREOF, the Executive Director of the Massachusetts Port Authority, and the Commissioner of the Commonwealth of Massachusetts Department of Environmental Protection have executed this Memorandum of Understanding as of the date first written above.

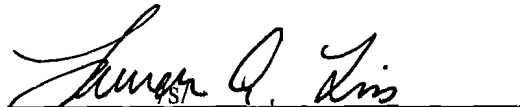
MASSACHUSETTS PORT
AUTHORITY


Virginia Buckingham
Executive Director

Approved as to Form:


Karen L. Nover
Chief Legal Counsel

DEPARTMENT OF
ENVIRONMENTAL PROTECTION


Lauren Liss
Commissioner

Approved as to Form:


Pamela D. Hawery
Counsel to the Commissioner

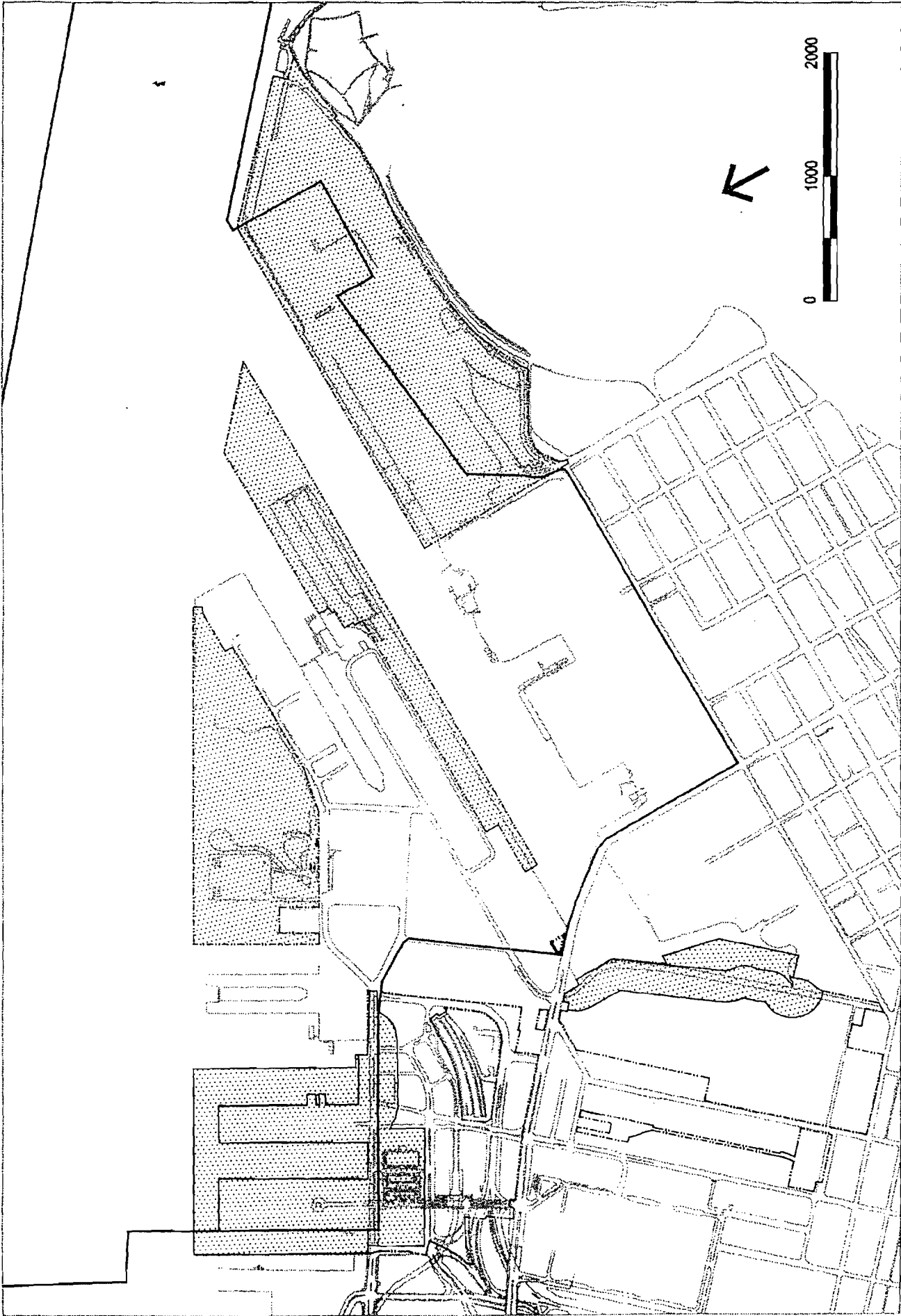


Exhibit A: Massport Properties
Subject to the DEP-MPA MOU

- Designated Port Area Boundary
- - - Approximate Massport Property Line
- ▨ Massport Properties Covered by the DEP-MPA MOU

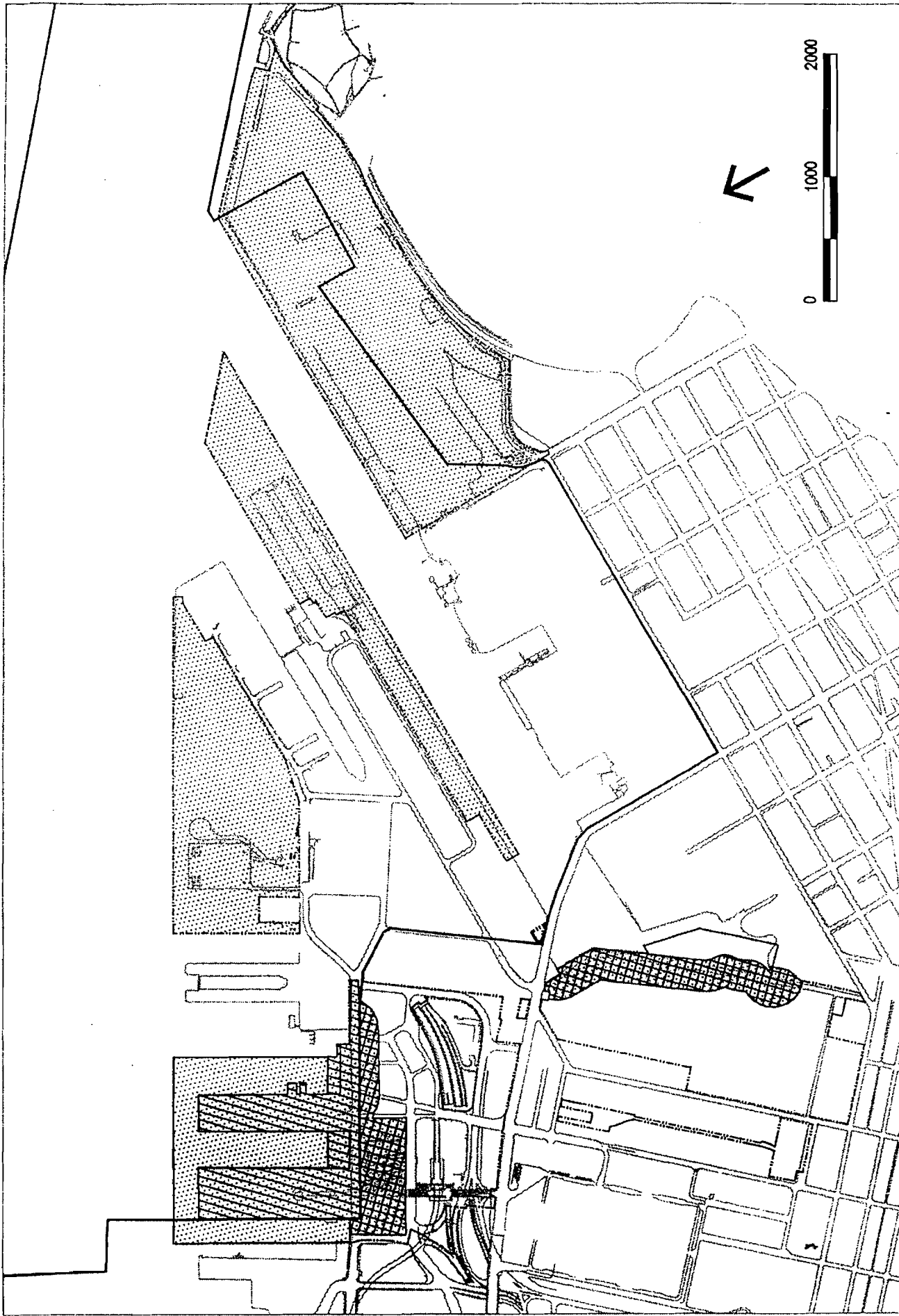





Exhibit B: Special Planning Areas

-  Special Planning Area within DPA
-  Special Planning Area outside DPA

-  Designated Port Area Boundary
-  Approximate Massport Property Line
-  Massport Properties Covered by the DEP-MPA MOU

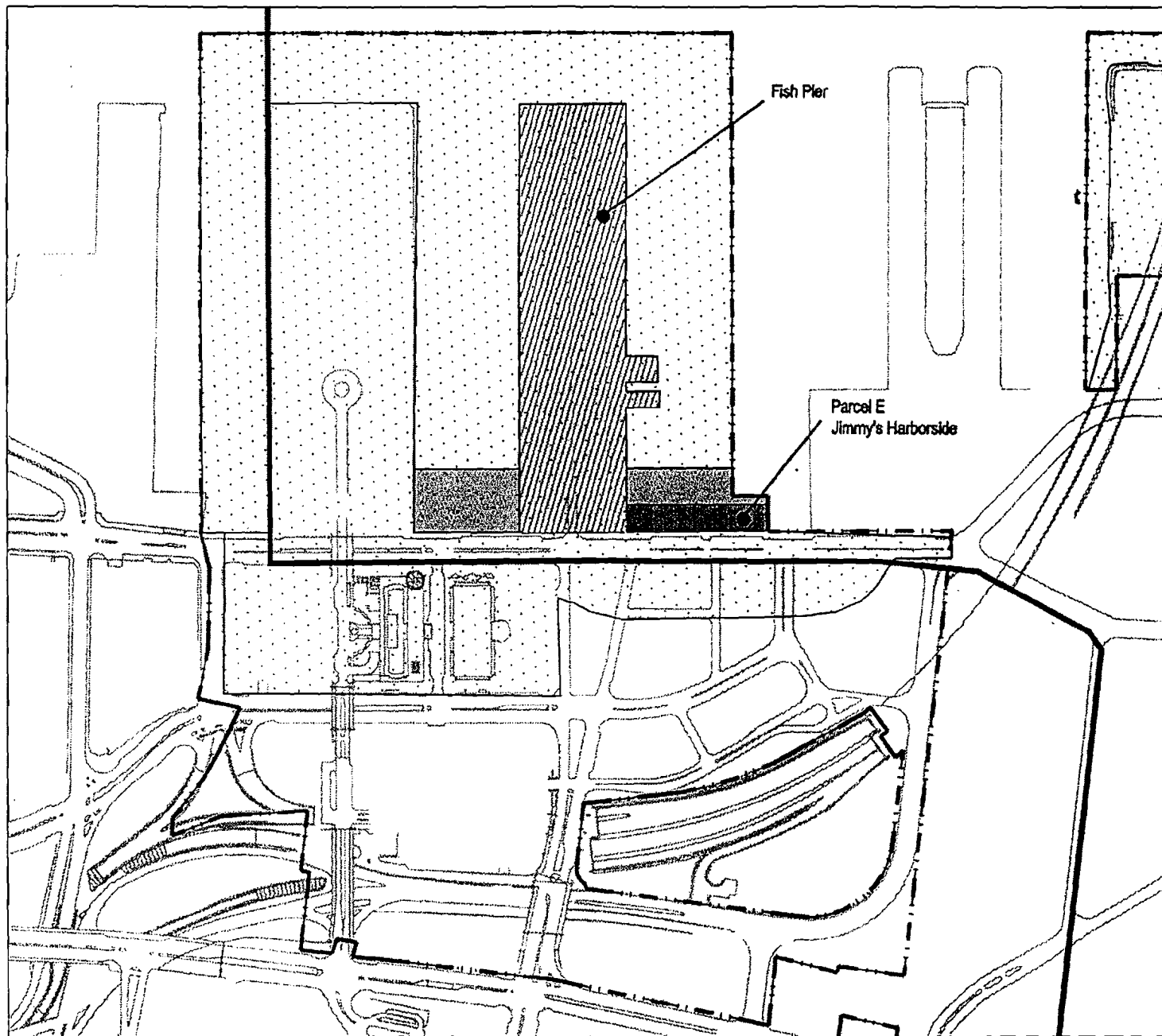
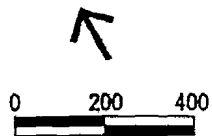








Exhibit C: Detail of Commonwealth Flats Waterfront



-  Potential Transient Docking Areas
-  Parcel E / Jimmy's Harborside
-  Fish Pier

-  Designated Port Area Boundary
-  Approximate Massport Property Line
-  Massport Properties Covered by the DEP-MPA MOU

Attachment B

Massport/MassDEP South Boston Memorandum of Understanding,
First Amendment signed by Massport



Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128-2909
Telephone (617) 568-5000
www.massport.com

June 24, 2021

VIA OVERNIGHT DELIVERY

Daniel J. Padien
Chief, Waterways Program
Division of Wetlands and Waterways
Massachusetts Department of Environmental Protection
1 Winter Street
Boston, MA 02108-4747

RE: First Amendment to South Boston Memorandum of Understanding

Dear Mr. Padien:

Enclosed please find three (3) originals of the First Amendment to the South Boston MOU, executed by Massport. Once the enclosed have been executed by MassDEP, please return two (2) originals to my attention for Massport's files.

Please do not hesitate to contact me if you have any questions or if you need anything further.

Very truly yours,

A handwritten signature in black ink, appearing to read "B Washburn".

Bradford Washburn
Manager, Environmental Planning & Permitting

cc: S. Dalzell, L. Mejias, E. Chronas (via email)

June 15, 2021

FIRST AMENDMENT TO THE
SOUTH BOSTON MEMORANDUM OF UNDERSTANDING

Between

MASSACHUSETTS PORT AUTHORITY

And

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENVIRONMENTAL PROTECTION

This First Amendment to the South Boston Memorandum of Understanding, entered into as of June 15, 2021, by and between the Massachusetts Port Authority (“Massport”) and the Commonwealth of Massachusetts Department of Environmental Protection (“MassDEP”), relative to the licensing of certain projects under M.G.L. c. 91 (“Chapter 91”) on certain properties owned by Massport in South Boston:

WHEREAS, Massport and the MassDEP entered into the South Boston Memorandum of Understanding (“MOU”) on March 15, 2001, governing the Chapter 91 licensing of projects on Massport property in an area delineated on Exhibit A of such MOU; and

WHEREAS, the MOU provided for certain Massport Properties within such subject area, delineated on Exhibit B to such MOU, to be licensed pursuant to Waterfront Development Plans, approved by MassDEP, which would prescribe specific licensing standards and criteria for new development and redevelopment; and

WHEREAS, since the effective date of the MOU on March 15, 2001, Massport has successfully developed and redeveloped significant portions of its South Boston properties, resulting in substantial public benefits, including economic development and financial and operational support to Massport, enabling Massport to improve its maritime operations and facilities in the Port of Boston, as required by Massport’s Enabling Act, Chapter 465 of the Acts of 1956; and

WHEREAS, since 2001, the South Boston area comprised of the Massport properties shown on Exhibit A, and the other properties owned by the Boston Planning & Development Agency, have experienced significant changes and improvements as a result of the investment in infrastructure improvements by the Commonwealth of Massachusetts, Massport and the City of Boston; and

WHEREAS, the Massport property located at 88 Black Falcon Avenue presents an opportunity to be redeveloped in a manner which can further enhance the operations of the Flynn Cruiseport, including the expansion and improvement of cruise ship facilities and related surface transportation improvements which will facilitate additional passenger vessel activities, while also providing financial resources to support other Massport Maritime operations in the Port of Boston.

NOW, THEREFORE, Massport and MassDEP agree as follows:

1. The Massport property at 88 Black Falcon will be included within the Special Planning Areas provided in Exhibit B of the MOU, and eligible to be subject to a Waterfront Development Plan under the MOU.
2. As of the effective date of this Amendment to the South Boston MOU, the original Exhibit B of said MOU shall be replaced with the new Exhibit B attached hereto.
3. This Amendment to the South Boston MOU shall become effective immediately upon the execution by the Commissioner of MassDEP and by a Massport Officer duly authorized by the Members of the Authority (the "Massport Board") and no further action shall be required by the parties hereof.

IN WITNESS WHEREOF, the Massachusetts Port Authority, and the Commonwealth of Massachusetts Department of Environmental Protection have executed this Amendment to the Memorandum of Understanding as of the date first written above.

MASSACHUSETTS PORT AUTHORITY



Michael A. Grieco
Assistant Secretary-Treasurer

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Approved as to Form:

Martin Suuberg
Commissioner

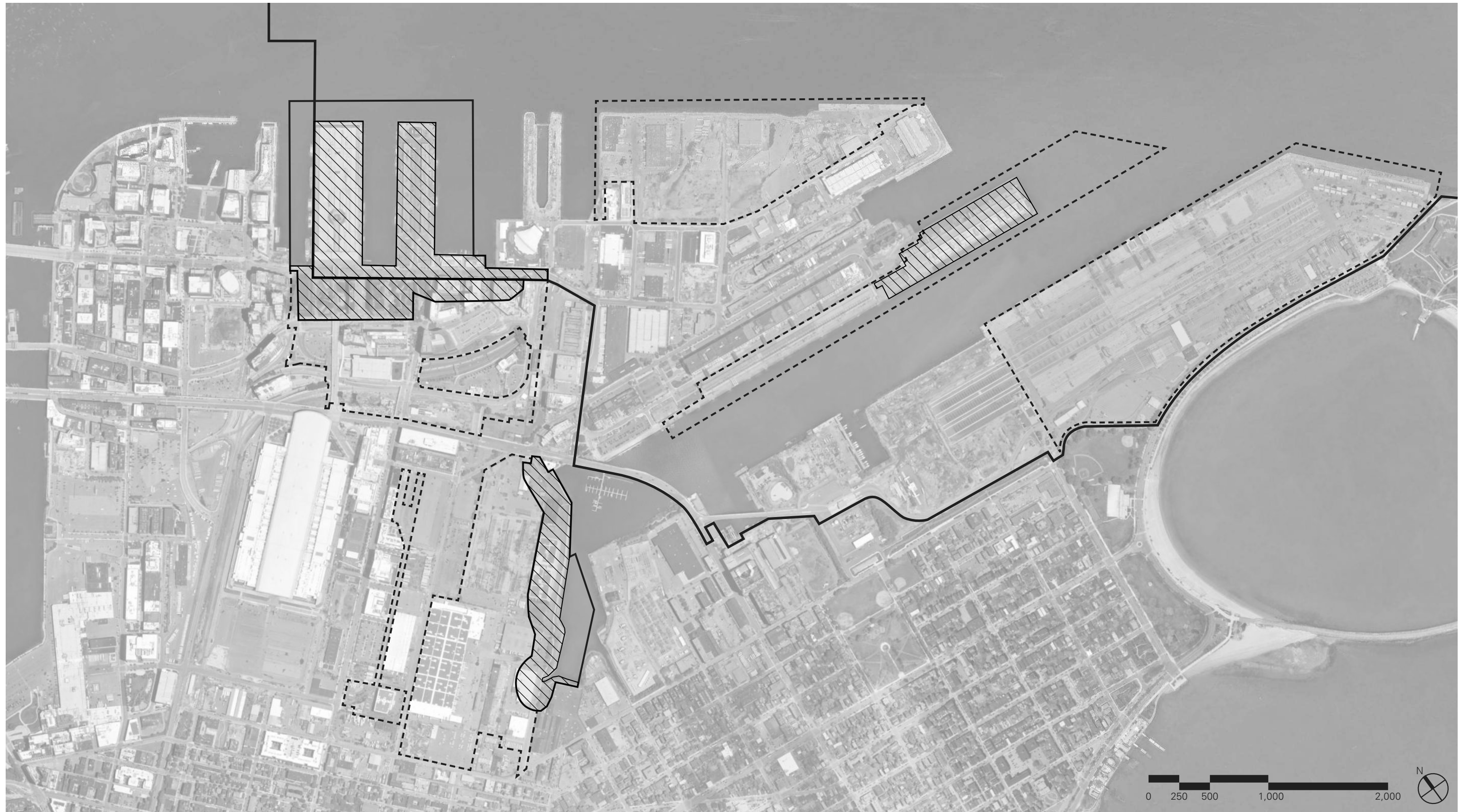


EXHIBIT B: SPECIAL PLANNING AREAS

- Massport Properties Covered by the DEP-MPA MOU
 - Special Planning Area
- Designated Port Area boundary
 - Approximate Massport Property Line

South Boston Designated Port Area ("DPA") Map:
<https://www.mass.gov/files/documents/2018/05/23/south-boston-dpa-map.pdf>

Attachment C

Massport DPA Property List

DPA Massport Land Use Calculations

South Boston

Planning Area	Total Development Area			Methodology: 1999 Boston Marine Industrial Park Master Plan		
	Maritime	Supporting	Building Footprint	Applied to Building SF		
	Maritime	Supporting	Building Footprint	Maritime	Supporting DPA Use	Excluded from Calcs
Comm Flats						
Fish Pier						
East Building footprint			41,300	34,382	6,918	
West Building footprint			41,400	39,268	2,132	
Exchange Center footprint			7,100	0	7,100	
Exterior	224,896	49,604		224,896	49,604	
Liberty Wharf						
Building A			1,469		1,469	
Building B			12,330		12,330	
Building C			9,205		9,205	
Surrounding Area		23,367		0	23,367	
World Trade Center						
Building footprint			422,345	0	422,345	
Apron without Building	70,275			70,275		
Fish Pier + WTC Watersheet						1,094,475
Northern Ave						
MMT						
Land Area	1,566,817			1,516,994	0	
Existing Structures			190,823	190,823		
Watersheet						237,222
Cruise Terminal + 88 Black Falcon						
Flynn Cruiseport	325,670	0	162,835	162,835	0	
88 Black Falcon Building	62,927	196,170		62,927	196,170	
88 Black Falcon Apron + GTA	200,154					
Parking and circulation				411,209	0	
Watersheet						702,822
Conley						
Main Terminal	5,386,531			5,386,531		108,353
Coastal Oil	1,190,350			1,190,350		114,994
Exelon	238,532			238,532		177,788
MBTA	523,532			523,532		214,594
Tommy Butler Buffer Park						184,273
Triangle Parcel (Boston Line)	8,013			8,013	0	
TOTAL				10,060,567	730,640	2,834,521
Percent				93.23%	6.77%	

Notes:

- 1) Northern Avenue is not included in the calculations, though it is included in the DPA boundary
- 2) Watersheet Not Counted toward DPA uses.
- 3) The proposed apron expansion on the East Apron of World Trade Center (12,785 SF) was included in the "Apron without Building" calculation. The proposed West Apron expansion was not included as it falls outside of the DPA boundary.
- 4) 88 Black Falcon will be subject to a new WDP (submitted herewith) which permits an increase in the amount of supporting DPA use on the parcel, but which will have a de minimis impact on the total amount of WDIU in the Massport Properties in the DPA

Attachment D

Letter from the Massport Maritime Director



Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128-2909
Telephone (617) 568-5000
www.massport.com

July 29, 2021

Daniel Padien, Program Director
Waterways Program
Department of Environmental Protection
One Winter Street
Boston, MA 02108

Dear Mr. Padien,

This letter is written with respect to the 88 Black Falcon expansion project (the Project) as described in the attached Preliminary Waterfront Development Plan (“WDP”). The WDP has been prepared in accordance with the South Boston Memorandum of Understanding (“MOU”) between the Massachusetts Port Authority (“Massport”) and the Department, dated March 15, 2001, as amended by the First Amendment thereto, and is being submitted by Massport under the provisions of Article 3 of the MOU. Section 3.2(I) of the MOU requires that Massport provide certain certifications as part of the WDP where such plan includes areas that are contained within a Designated Port Area. A substantial portion of the plan area for this WDP is contained within the South Boston Designated Port Area.

88 Black Falcon has been a mixed-use property since 2013, when it was granted a Chapter 91 License authorizing a mix of water-dependent industrial uses and Supporting DPA uses. The property is currently leased by Massport to DIV Black Falcon, LLC, an affiliate of The Davis Companies, under a long-term ground lease (“Proponent”). The Proponent intends to maintain and upgrade the existing facilities for maritime uses at 88 Black Falcon, including transportation improvements, enlargement of the Ground Transportation Area 2 that is used to facilitate cruise ship servicing, and the pier’s south apron, while also improving public access to the water, including the public amenities which exist under the current Chapter 91 License.

The following points satisfy specific obligations set forth in the MOU:

- Including both the current configuration and the proposed alterations of 88 Black Falcon that will be the subject of a future Chapter 91 license, Massport will maintain Water-dependent Industrial Uses, Accessory Uses, Maritime Projects, and Temporary Uses on no less than seventy-five percent (75%) of the Massport Properties located in the South Boston DPA and governed by the MOU. A tabulation of the uses and respective areas of the Massport properties in the DPA is attached herewith;
- The Nonwater-dependent Uses within the Project will not give rise to severe conflict with Port operations or excessive consumption of Port space, either directly or indirectly. Based on Massport’s evaluation of the Project Area tenant inventory, there will be no loss

88 Black Falcon Avenue

July 29, 2021

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of Water-Dependent Industrial Uses in the Plan Area with the application of the criteria proposed in the Preliminary Waterfront Development Plan.

- Additionally, the implementation of this Waterfront Development Plan will not significantly disrupt any existing Water-dependent Industrial Uses in areas proximate to this portion of the Special Planning Area, including the Flynn Cruiseport Boston, which is owned by Massport, and the Coastal Cement Corporation leased property, which is owned by the City of Boston Economic Development and Industrial Corporation.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Michael Meyran
Port Director
Massachusetts Port Authority